WSR 13-19-065
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 17, 2013, 9:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-122.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits? and creating WAC 388-400-0065 Housing and essential needs (HEN), 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program?, 388-406-0056 When does my eligibility for referral to the housing and essential needs (HEN) program begin?, 388-408-0070 Who is included in my assistance unit when the department determines eligibility for referral to the housing and essential needs (HEN) program?, 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program?, 388-447-0005 What evidence does the department consider to determine incapacity?, 388-447-0010 What medical evidence do I need to provide?, 388-447-0020 How does the department assign severity ratings to my impairments?, 388-447-0030 Progressive evaluation process step I—How does the department review the medical evidence required for an incapacity determination?, 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments?, 388-447-0050 Progressive evaluation process step III—How does the department determine the severity of physical impairments?, 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments?, 388-447-0070 Progressive evaluation process step V—How does the department determine the impact of a mental impairment on my ability to function in a work environment?, 388-447-0080 Progressive evaluation process step VI—How does the department determine the impact of a physical impairment on my ability to function in a work setting?, 388-447-0090 Progressive evaluation process step VII—How does the department determine ability to perform past work?, 388-447-0100 Progressive evaluation process step VIII—How does the department determine ability to perform other work?, 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end?, 388-447-0120 How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program?, 388-450-0113 Does the department allocate income of a HEN referral recipient to legal dependents?, 388-450-0138 Does the department allocate income of an ineligible spouse to a housing and essential needs (HEN) referral recipient?, and 388-450-0178 Does the department offer an income deduction for housing and essential needs (HEN) referral applicants and recipients as an incentive to work?, and any other related rules as required by SHB 2069.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on November 5, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 6, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m., November 5, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 22, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-442-0010 and create WAC 388-400-0065, 388-400-0070, 388-406-0056, 388-408-0070, 388-447-0001, 388-447-0005, 388-447-0010, 388-447-0020, 388-447-0030, 388-447-0040, 388-447-0050, 388-447-0060, 388-447-0070, 388-447-0080, 388-447-0090, 388-447-0100, 388-447-0110, 388-447-0120, 388-450-0113, 388-450-0138, and 388-450-0178 in order to comply with SHB 2069, Laws of 2013.

Reasons Supporting Proposal: These changes are necessary to conform to SHB 2069, Laws of 2013, which requires the department to determine eligibility for referral to the HEN program.

Statutory Authority for Adoption: SHB 2069, RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Shane Riddle, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4352.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments and proposed rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part "[t]his section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility and riles [rules] concerning liability for care of dependents."

September 11, 2013
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-400-0065 Housing and essential needs (HEN) (1) For the purposes of this chapter:

(a) "Commerce" means the Washington state department of commerce.

(b) "Department" means the department of social and health services (DSHS).

(c) "Housing support" means assistance provided to maintain existing housing or to obtain housing or utilities.

(d) "Essential needs items" means personal health and hygiene items, cleaning supplies, transportation passes, and other personal needs items.

(2) What is housing and essential needs (HEN)?

Within available funds, HEN provides housing support and essential needs items to eligible individuals.

(3) Who administers HEN? HEN is administered by commerce through its network of local contracted HEN providers.

(4) Who determines eligibility for HEN?

(a) The department determines eligibility for referral to the HEN program and sends you a notice to say whether you are eligible for referral.

(b) After the department determines you eligible for a HEN referral, the local HEN provider decides whether you can receive HEN and what benefits you can receive based on guidelines established by commerce.

(c) Within their funding, the local HEN provider can continue your benefits as long as you remain eligible for referral to the HEN program.

(5) If your notice from the department says you are eligible for HEN referral, you must contact your local HEN provider to apply for housing supports and essential needs items. Referral to the HEN program does not guarantee that you will receive HEN.

NEW SECTION

WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program? (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

(a) Apply for cash assistance as detailed in WAC 388-406-0010;

(b) Complete an interview with the department;

(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;

(d) Are at least eighteen years old or, if under eighteen, legally emancipated or a member of a married couple;

(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(g) Meet the citizenship/alien status requirement for ABD cash assistance under WAC 388-424-0015;

(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;

(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;

(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.

(k) To remain eligible for HEN referral, you must also:

(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and

(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

(a) Are eligible for the aged, blind, or disabled (ABD) cash assistance program;

(b) Are eligible for the pregnant women assistance (PWA) program;

(c) Are eligible for temporary assistance for needy families (TANF) program;

(d) Refuse or fail to meet a TANF rule without good cause;

(e) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

(f) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

(g) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

(h) Are an ineligible spouse of an SSI recipient;

(i) Refuse or fail to follow a social security administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

(j) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060; or

(k) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010.

(l) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for referral to the HEN program if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are sixty-five years of age or older.

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

NEW SECTION

WAC 388-406-0056 When does my eligibility for referral to the housing and essential needs (HEN) program begin? This section applies to referrals to the housing and essential needs (HEN) program.

(1) If you meet the eligibility requirements in WAC 388-400-0070, HEN referral eligibility begins:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the forty-fifth day from the date we receive your application.

NEW SECTION

WAC 388-408-0070 Who is included in my assistance unit when the department determines eligibility for referral to the housing and essential needs (HEN) program? (1) If you are an adult who is incapacitated as defined in WAC 388-447-0001, you are included in the housing and essential needs (HEN) referral assistance unit (AU).

(2) If you are married and live with your spouse, we decide who to include in the AU based on who is incapacitated:

(a) If both spouses are incapacitated as defined in WAC 388-447-0001, we include both spouses in the same AU.

(b) If only one spouse is incapacitated, we include only the incapacitated spouse in the AU. We count some of the income of the other spouse under WAC 388-450-0138.

(3) If you are unmarried, you are the only person in your AU.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits? (1) You are a fleeing felon if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

(2) If you are a fleeing felon, or violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, you are not eligible for TANF/SFA, PWA, ABD cash, referral to the HEN program, or Basic Food benefits.

NEW SECTION

WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" mean the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Incapacitated" means you cannot be gainfully employed due to a physical or mental impairment that is expected to continue for at least ninety days from the date you apply.

(d) "Mental impairment" means a diagnosable mental disorder.

(e) "Physical impairment" means a diagnosable physical illness.

(2) You must be incapacitated in order to receive a HEN referral.

(3) We determine if you are incapacitated when:

(a) You apply for a referral to the HEN program;

(b) You become gainfully employed;

(c) You obtain work skills by completing a training program;

(d) We receive new information that indicates you may be able to work; or

(e) Your incapacity authorization period ends.

(4) We deny your HEN referral if you are gainfully employed at the time of application for referral to the HEN program. "Gainfully employed" means you are performing, in a regular predictable manner, an activity usually done for pay of profit and earning more than the substantial gainful activity standard defined by the social security administration (SSA).

(5) We do not consider you to be gainfully employed if you are working:

(a) Under special conditions that go beyond providing reasonable accommodation; or

(b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

(6) We determine you are incapacitated if you are:

(a) Approved through the progressive evaluation process (PEP). The PEP is a sequence of eight steps described in WAC 388-447-0030 through 388-447-0100; or

(b) Eligible for services from the developmental disabilities administration (DDA);

(c) Diagnosed as having an intellectual disability based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

(d) Eligible for long-term care services from aging and long-term support administration (ALTSA);

(e) Release from a medical institution where you received services from ALTSA within the past 30 days; or

(f) Released from inpatient treatment for a mental impairment within the past 30 days if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) You were discharged into outpatient mental health treatment.

(7) If you have a physical or mental impairment, are impaired by alcohol or drug addiction, and do not meet the other incapacity criteria in section 6 (b) through (f), we decide if you are incapacitated by applying the PEP. We do not consider symptoms related to substance use or a diagnosis of chemical dependency when determining incapacity when we have evidence substance use is material to your impairment(s).

(8) We consider substance use material to your impairment(s) if you are disabled primarily because of drug or alcohol use or addiction.

(9) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment(s).

(10) In determining incapacity, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling; and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and co-workers, tolerating the pressures

of a work setting, maintaining appropriate behavior, and adapting to changes in a routine work setting.

NEW SECTION

WAC 388-447-0005 What evidence does the department consider to determine incapacity? We accept medical evidence from the following sources when considering incapacity:

(1) For a physical impairment:

(a) A physician, which includes:

(i) Medical doctor (M.D.); and

(ii) Doctor of osteopathy (D.O.);

(b) An advanced registered nurse practitioner (ARNP) for physical impairments that are within their area of certification to treat;

(c) A Physician's Assistant (P.A.);

(d) A Doctor of optometry (O.D.) for visual acuity impairments;

(e) Doctor of podiatry (D.P.) for foot disorders;

(f) Doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) for tooth abscesses or temporomandibular joint (TMJ) disorders; or

(g) The chief of medical administration of the Veterans' Administration, or their designee, as authorized in federal law.

(2) For a mental impairment:

(a) A psychiatrist;

(b) A psychologist;

(c) An ARNP certified in psychiatric nursing; or

(d) At the department's discretion:

(i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or

(ii) A physician who is currently treating you for a mental impairment.

(3) We do not accept medical evidence from the medical professionals listed in (1) and (2) above, unless they are licensed in Washington State or the state where the examination was performed.

(4) "Supplemental medical evidence" means information from a health professional not listed in (1) or (2) above who can provide supporting documentation for impairments established by a medical professional listed in (1) or (2) above. Supplemental medical evidence sources include:

(a) Health professionals who have conducted tests or provided ongoing treatment to you, such as a physical therapist, chiropractor, nurse, naturopath, audiologist, or licensed social worker;

(b) Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health-related services to you; or

(c) Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse.

(5) "Other evidence" means information from other sources not listed above who can provide supporting documentation of functioning for impairments established by acceptable medical sources in subsections (1) or (2) of this section. Sources of "other evidence" include public and private agencies, schools, parents, caregivers, employers, and practitioners such as social workers.

NEW SECTION

WAC 388-447-0010 What medical evidence do I need to provide? You must provide medical evidence of your impairment(s) and how your impairment(s) affects your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective and complete.

(1) Objective evidence for physical impairments means:

(a) Laboratory test results;

(b) Pathology reports;

(c) Radiology findings including results of X rays and diagnostic imaging scans;

(d) Clinical finding including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or

(e) Hospital history and physical reports and admission and discharge summaries; or

(f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

(a) Clinical interview observations, including objective mental status exam results and interpretation.

(b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders(DSM).

(c) Hospital, outpatient and other treatment records related to your current impairments.

(d) Testing results, if any, including:

(i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or

(ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-447-0005 and must include:

(a) A diagnosis for the impairment, or impairments, based on an examination performed within twelve months of application;

(b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-447-0001; and

(c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within the ninety days of the date of application or incapacity review.

(4) We consider documentation in addition to objective evidence to support the medical evidence provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) If you can't obtain medical evidence sufficient for us to determine if you are incapacitated without cost to you, and you meet the other eligibility conditions defined in WAC

388-447-0001, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

NEW SECTION

WAC 388-447-0020 How does the department assign severity ratings to my impairments? (1) "Severity rating"is a rating of the extent of your impairment and how it impacts your ability to perform the basic work activities detailed in WAC 388-447-0001. Severity ratings are assigned in Steps II through IV of the progressive evaluation process (PEP). The following chart provides a description of levels of limitations on work activities and the severity ratings that would be assigned to each.

	Effect on Work Activities	Degree of Impairment	Numerical Value
(a)	There is no effect on your performance of one or more basic work-related activities.	None	1
(b)	There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c)	There are significant limits on your performance of one or more basic work-related activity.	Moderate	3
(d)	There are very significant limits on your performance of one or more basic work-related activities.	Marked	4
(e)	You are unable to perform at least one basic work-related activity.	Severe	5

(2) We use the description of how your condition impairs your ability to perform work activities given by the medical evidence provider to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.

(3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:

(a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental impairment; and

(b) Your impairment has lasted, or is expected to last, nine months or more with available treatment.

(4) The contracted doctor reviews the medical evidence, severity ratings, and functional assessment to determine whether:

(a) The medical evidence is objective and sufficient to support the findings of the medical evidence provider;

(b) The description of impairments is supported by the medical evidence; and

(c) The severity rating, duration, and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.

(5) If the medical evidence provider's description of your impairments is not consistent with the objective medical evidence, we will:

(a) Assign a severity rating, duration, and functional limitations consistent with the objective medical evidence;

(b) Clearly describe why we rejected the medical provider's opinion; and

(c) Identify the medical evidence used to make the determination.

NEW SECTION

WAC 388-447-0030 Progressive evaluation process step I — How does the department review the medical evidence required for an incapacity determination? (1) When we receive your medical evidence, we review it to see if it is sufficient to decide whether you meet the incapacity requirements. It must:

(a) Contain sufficient information under WAC 388-447-0010;

(b) Be written by an authorized medical professional described in WAC 388-447-0005;

(c) Document a potentially incapacitating condition; and

(d) Indicate an impairment is expected to last at least ninety days from the application date.

(2) If the information received isn't clear, we may require more information before we decide if you are incapacitated. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny incapacity if:

(a) There is only one impairment and the severity rating is less than three;

(b) The reported impairment isn't expected to last ninety days or more from the date of application;

(c) We don't have clear and objective medical evidence to approve incapacity.

NEW SECTION

WAC 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments? If you are diagnosed with a mental impairment by a professional described in WAC 388-447-0005, we use information from the medical evidence provider to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

(a) Psychosocial and treatment history records;

(b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;

(c) Results of psychological tests; and

(d) Symptoms observed by the examining professional that show how your impairment affects your ability to perform basic work-related activities.

(2) We do not consider diagnoses or symptoms of alcohol or substance use or dependency when the only impairment supported by objective medical evidence is drug or alcohol addiction.

(3) If you are diagnosed with an intellectual disability, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

(4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:

(a) Short term memory impairment;

(b) Perceptual or thinking disturbances;

(c) Disorientation to time and place; or

(d) Labile, shallow, or coarse affect.

(5) We base the severity of an impairment diagnosed as a mood, anxiety, thought, memory, personality, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:

(a) Affect your ability to perform basic work-related activities; and

(b) Are consistent with a diagnosis of a mental impairment as listed in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).

(6) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5)(a) of this section as follows:

Condition	Severity Rating
(a) The clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features; (c) You have had two or more hospitalizations for psychiatric reasons in the past two years; (d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years; (e) The clinical findings and objective evidence are consistent with very significant limitations on ability to perform one or more basic work activities.	Marked (4)
(f) The clinical findings and objective evidence are consistent with an inability to perform one or more basic work activities.	Severe (5)

(7) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or (b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	Marked (4)
(c) Two or more disorders rated marked severity (4).	Severe (5)

(8) We deny incapacity when you haven't been diagnosed with a significant physical impairment and the overall severity of your mental impairment is one or two;

(9) We approve incapacity when your overall mental severity rating is severe (5).

NEW SECTION

WAC 388-447-0050 Progressive evaluation process step III—How does the department determine the severity of physical impairments? "Severity of a physical impairment" means the degree that an impairment restricts you from performing the basic work-related activities in WAC 388-447-0001. Severity ratings range from one to five, with five being the most severe. We assign severity ratings based on the table in WAC 388-447-0020.

(1) We assign to each physical impairment a severity rating that is supported by medical evidence.

(2) If your physical impairment is rated two, and there is no mental impairment or a mental impairment that is rated one, we deny incapacity.

(3) If your physical impairment is rated five, we approve incapacity.

NEW SECTION

WAC 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments? (1) If you have more than one impairment, we determine the overall severity rating by deciding if your impairments have a combined effect on your ability to be gainfully employed.

(2) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Condition	Severity Rating
(a) All impairments are mild and there is no cumulative effect on basic work activities.	Mild 2

Condition		Severity Rating	
(b)	All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate	3
(c)	Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked	4
(d)	Two or more impairments are of marked severity.	Severe	5

(3) We deny incapacity at this step when:

(a) The overall severity rating is two; or

(b) Substance use is material to your impairment under WAC 388-447-0001 and your overall severity rating is two when symptoms related to substance use or a diagnosis of chemical dependency are not considered.

(4) We approve incapacity at this step when the overall severity rating is five.

NEW SECTION

WAC 388-447-0070 Progressive evaluation process step V—How does the department determine the impact of a mental impairment on my ability to function in a work environment? If you have a mental impairment, we evaluate your cognitive and social functioning in a work setting. "Functioning" means your ability to perform typical tasks that would be required in a routine job setting and your ability to interact effectively while working.

(1) We evaluate cognitive and social functioning by assessing your ability to:

(a) Understand, remember, and persist in tasks by following very short and simple instructions.

(b) Understand, remember, and persist in tasks by following detailed instructions.

(c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.

(d) Learn new tasks.

(e) Perform routine tasks without special supervision.

(f) Adapt to changes in a routine work setting.

(g) Make simple work-related decisions.

(h) Be aware of normal hazards and take appropriate precautions.

(i) Ask simple questions or request assistance.

(j) Communicate and perform effectively in a work setting.

(k) Complete a normal workday and workweek without interruptions from psychologically based symptoms.

(l) Set realistic goals and plan independently.

(m) Maintain appropriate behavior in a work setting.

(2) We approve incapacity when we have objective medical evidence that demonstrates you are:

(a) At least moderately impaired in your ability to understand, remember, and persist in tasks following simple instructions, and at least moderately limited in your ability to:

(i) Learn new tasks;

(ii) Be aware of normal hazards and take appropriate precautions; and

(iii) Perform routine tasks without undue supervision; or

(b) At least moderately impaired in your ability to understand, remember, and persist in tasks following complex instructions; and at least markedly limited in your ability to:

(i) Learn new tasks;

(ii) Be aware of normal hazards and take appropriate precautions; and

(iii) Perform routine tasks without undue supervision.

(3) We approve incapacity when you are moderately impaired in your ability to:

(a) Communicate and perform effectively in a work setting; and

(b) Markedly impaired in your ability to maintain appropriate behavior in a work setting.

NEW SECTION

WAC 388-447-0080 Progressive evaluation process step VI—How does the department determine the impact of a physical impairment on my ability to function in a work setting? In Step VI of the progressive evaluation process (PEP), we review the medical evidence provided and determine how your physical impairment limits your ability to work. This determination is then used in Steps VII and VIII of the PEP to determine your ability to perform either work you have done in the past or other work available in the national economy.

(1) "Exertion level"means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one third of the time and "frequently" means more than one third of the time or more.

The following table is used to determine your exertion level. Included in this table is a strength factor, which represents your ability to perform physical activities, as defined in Appendix C of the *Dictionary of Occupational Titles* (DOT), Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O.*NET).

If you are able to:		Then we assign this exertion level
(a)	Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary
(b)	Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or pulling arm or leg movements most of the day.	Light

If you are able to:	Then we assign this exertion level
(c) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(d) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) "Exertional limitation" means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. We consider any exertional limitations you have when determining your ability to work.

(3) "Functional physical capacity" means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the severity of the physical impairment is moderate, marked, or severe. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) "Non-exertional physical limitation" means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which may include, among other things, your inability to work in an area where you would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

NEW SECTION

WAC 388-447-0090 Progressive evaluation process step VII—How does the department determine ability to perform past work? (1) If your overall severity rating is moderate (three) or marked (four) and we have not approved or denied incapacity by this stage of the progressive evaluation process (PEP), then we decide if you are able to do the same or similar work as you have done in the past. We consider your current physical and/or mental limitations when making this decision. Vocational factors are education, relevant work history, and age.

(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work that:

(a) Is defined as gainful employment per WAC 388-447-0001;

(b) Has been performed within the past five years; and

(c) You performed long enough to acquire the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation that you have, we compare:

(a) The exertion, non-exertional, educational, and skill requirements detailed in the DOT for that job; and

(b) Current cognitive, social, exertional, and non-exertion factors that significantly limit your ability to perform past work.

(4) After considering vocational factors, we deny incapacity when we determine you:

(a) Are able to perform any of your relevant past work; or

(b) Recently acquired specific work skills through completion of schooling or training, for jobs within your current physical and mental capacities.

(5) We approve incapacity at this step if you are fifty-five years of age or older and do not have the physical or mental ability to perform relevant past work.

NEW SECTION

WAC 388-447-0100 Progressive evaluation process step VIII—How does the department determine ability to perform other work? When we determine you cannot do work you have done in the past, we consider your age, education, and other factors to decide if you are able to perform other work.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enable you to meet job requirements. We classify your level of education as follows:

If you:	Then your education level is:
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the eleventh grade; or (c) Have participated in special education in basic academic classes of reading, writing, or mathematics in high school.	Limited education
(d) Have received a high school diploma or high school equivalency certificate; or (e) Have received skills training and was awarded a certificate, degree or license.	High school and above level of education

(2) We approve incapacity if you have a moderate or marked physical impairment and meet the criteria below:

Exertion Level	Age	Education Level	Other Vocational Factors
Sedentary	Any age	Any level	Does not apply
Light	50 and older	Any level	Does not apply
Light	35 and older	Illiterate or LEP	Does not apply
Light	18 and older	Limited Education	Does not have any past work
Medium	50 and older	Limited Education	Does not have any past work

(3) We approve incapacity when you have a moderate or marked mental health impairment and we have objective medical evidence that social or cognitive factors described in WAC 388-447-0070 interfere with working as follows:

Social and Cognitive Limitation		Age
(a)	Moderately impaired in your ability to: (i) Communicate and perform effectively in a work setting; and (ii) Maintain appropriate behavior in a work setting.	50 years and older
(b)	Markedly impaired in your ability to: (i) Understand, remember, and persist in tasks following detailed instructions; (ii) Set realistic goals and plan independently; or (iii) Learn new tasks.	45 years and older
(c)	Markedly impaired in your ability to: (i) Understand, remember, and persist in tasks by following very short and simple instructions; (ii) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision; (iii) Perform routine tasks without special supervision; (iv) Adapt to changes in a routine work setting; (v) Make simple work-related decisions; (vi) Be aware of normal hazards and take appropriate precautions; (vii) Ask simple questions or request assistance (viii) Communicate and perform effectively in a work setting; (ix) Complete a normal workday and work week without interruption from psychologically based symptoms; or (x) Maintain appropriate behavior in a work setting.	Any age

(4) We approve incapacity when you have both a mental and physical impairment with at least a moderate overall severity and we have objective medical evidence that social or cognitive factors in WAC 388-447-0070 interfere with your ability to work as follows:

Age	Education	Other Restrictions
Any age	Any level	(a) You are moderately impaired in your ability to communicate and perform effectively in a work setting.
50 or older	Limited education or less	(b) You are restricted to medium exertion level or less.
Any age	Limited education or less	(c) You are restricted to light exertion level or less.

(5) If you do not meet the criteria listed above, and there are jobs you can do in the national economy, we will find you able to perform other work and take the following actions:

(a) Deny incapacity; and

(b) Give you examples of jobs you can do in the national economy despite your impairment(s).

(3) If there are no jobs you can do in the national economy despite your impairment(s), we approve incapacity.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end? (1) The maximum period of eligibility for referral to the housing and essential needs (HEN) program is twelve months before we must review incapacity.

(2) Your HEN referral eligibility stops at the end of your incapacity authorization period unless you provide current medical evidence that demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria detailed in WAC 388-447-0001.

(3) The medical evidence must meet the criteria defined in WAC 388-447-0010.

(4) We use medical evidence received after your incapacity authorization period has ended when:

(a) The delay was not due to your failure to cooperate; and

(b) We receive the evidence within thirty days of the end of your incapacity authorization period; and

(c) The evidence meets the incapacity criteria in WAC 388-447-0001.

(5) Even if your condition has not improved, you aren't eligible for referral to the HEN program when:

(a) We receive current medical evidence that doesn't meet the incapacity criteria in WAC 388-447-0001; or

(b) We determine the prior decision that your condition met incapacity requirements was incorrect because:

(i) The information we had was incorrect or not enough to show incapacity; or

(ii) We didn't apply the rules correctly to the information we had at that time.

NEW SECTION

WAC 388-447-0120 How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program? (1) When we have information that indicates you may be chemically dependent, you must complete a chemical dependency assessment unless you have good cause to not do so.

(2) You must participate in drug or alcohol treatment if a certified chemical dependency professional indicates a need for treatment, unless you have good cause to not do so.

(3) We consider the following to be good cause for not following through with a chemical dependency assessment or treatment:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment;

(b) The outpatient chemical dependency treatment you need isn't available in the county where you live; or

(c) The inpatient chemical dependency treatment you need isn't available at a location you can reasonably access.

(4) If you refuse or fail to complete an assessment or treatment without good cause, your HEN referral eligibility will end following advance notification rules under WAC 388-458-0030.

NEW SECTION

WAC 388-450-0113 Does the department allocate income of a housing and essential needs (HEN) referral recipient to legal dependents? This section applies to referrals to the Housing and Essential Needs (HEN) program.

(1) The income of a HEN referral recipient is reduced by the following:

(a) The HEN referral earned income disregard as specified in WAC 388-450-0178; and

(b) The amount of current and/or back child support that the recipient is paying each month under a court or administrative order. If the monthly child support payment is greater than the department's standard of need, income is instead reduced by the department's standard of need.

(2) When a HEN referral recipient in a medical institution, alcohol or drug treatment center, congregate care facility or adult family home has income, the income is countable to meet the recipient's needs after the income is reduced by the following:

(a) The HEN referral program income limit for the nonapplying spouse and legal dependents living in the home; and

(b) The standard of assistance the client is eligible for while residing in the alternative care facility.

NEW SECTION

WAC 388-450-0138 Does the department allocate income of an ineligible spouse to a housing and essential needs (HEN) referral recipient? This section applies to referrals to the Housing and Essential Needs (HEN) program.

(1) When a HEN referral recipient is married and lives with their nonapplying spouse, the following income is considered available to the client:

(a) The remainder of the recipient's wages, retirement benefits and other income after reducing the total income by:

(i) The HEN referral work incentive deduction, as specified in WAC 388-450-0178; and

(ii) The amount of current and/or back child support that the recipient is paying each month under a court or administrative order. If the monthly child support payment is greater than the department's standard of need, income is instead reduced by the department's standard of need.

(b) The remainder of the nonapplying spouse's wages, retirement benefits and other income after reducing the total income by:

(i) An amount not to exceed the department's standard of need for court ordered or administratively ordered current or back child support for legal dependents; and

(ii) The HEN referral income limit amount as specified under WAC 388-478-0090 which includes ineligible assistance unit members.

(c) One-half of all other community income.

NEW SECTION

WAC 388-450-0178 Does the department offer an income deduction for housing and essential needs (HEN) referral applicants and recipients as an incentive to work? We give a deduction to Housing and Essential Needs (HEN) referral recipients who receive income from work. The deduction applies to eligibility for referral to the HEN program only. We allow the following income deduction when we determine your eligibility for referral to the HEN program:

We only count fifty percent of your monthly gross earned income. We do this to encourage work.

WSR 13-20-039
PROPOSED RULES
PARKS AND RECREATION COMMISSION

[Filed September 24, 2013, 4:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-060.

Title of Rule and Other Identifying Information: WAC changes, ski lift program, WAC 352-44-020 and 352-44-080.

Hearing Location(s): Gig Harbor City Hall, 3510 Grandview Street, Gig Harbor, WA 98335, (253) 851-8136, on November 14, 2013, at 9:00 a.m.

Date of Intended Adoption: November 14, 2013.

Submit Written Comments to: Nata Hurst, 1111 Israel Road S.W., Olympia, WA 98504-2650, e-mail nata.hurst@parks.wa.gov, fax (360) 586-0207, by November 8, 2013.

Assistance for Persons with Disabilities: Contact Becki Ellison at becki.ellison@parks.wa.gov or by calling (360) 902-8502.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating WAC 352-44-020 to have certificate timing match operating use. Revoking WAC 352-44-080 Recreational conveyances—Simulated load test. State parks has adopted ANSI B77.1 current edition. Having a WAC cover the same issue is not necessary and may cause a conflict.

Reasons Supporting Proposal: Updates bring the WACs in to alignment of current practice.

Statutory Authority for Adoption: RCW 79A.40.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nata Jo Hurst, 1111 Israel Road, Olympia, WA 98504, (360) 902-8638.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. No fiscal impact.

September 24, 2013
Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending Order 20, filed 7/31/74)

WAC 352-44-020 Recreational conveyances—Certification. Each conveyance for persons generally engaging in winter sports recreational activities, as described in RCW 70.88.010, shall have a current ((~~annual~~)) seasonal certificate to operate on a form approved and provided by the commission. Said certificate shall ((~~be for an annual term of one year beginning January 1 of each year~~)) cover a six-month season, either winter (November 1st to May 31st) or summer (June 1st to October 31st. No conveyance shall be operated for use by the public unless a valid current certificate has been issued by the director. The certificate shall be:

(1) Signed by the director.

(2) Posted in a conspicuous location at the main loading terminal during periods of operation for public use.

(3) Adequately protected from the elements.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-44-080	Recreational conveyances—Simulated load test.

WSR 13-20-060
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed September 26, 2013, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-19-107.

Title of Rule and Other Identifying Information: Amends WAC 181-02-002 creating consistency in rules governing alternative and equivalent assessments to the WEST-B. Equivalent tests to the WEST-B may be submitted section-by-section.

Hearing Location(s): ESD 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 14, 2013, at 8:30.

Date of Intended Adoption: November 14, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 7, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by November 7, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Alternative assessments may be submitted by section (math, reading, writing) and meet the requirements for WEST-B. Equivalent assessments, such as the Praxis I, have only been permitted by whole test. The change will make the equivalent and alternative assessments consistent.

Reasons Supporting Proposal: Legislation HB 1178, Laws of 2013.

Statutory Authority for Adoption: RCW 28A.410.220.

Statute Being Implemented: RCW 28A.410.220.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, Old Capitol Building, 600 Washington Street, Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

September 26, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-16-051, filed 8/1/13, effective 9/1/13)

WAC 181-01-002 WEST-B exemptions. (1) Candidates who are prepared and/or certified out-of-state applying for a Washington state residency teaching certificate under WAC 181-79A-257 (1)(b) or 181-79A-260, or out-of-state candidates applying to masters-degree level teacher preparation programs residing outside of the state of Washington at time of application, in lieu of passing the WEST-B, may pres-

ent evidence of passing an alternative assessment per WAC 181-01-0025, or may provide official documentation of scores on the Praxis I or the California basic educational skills test (*CBEST*®) or the *NES*® Essential Academic Skills test which meet the minimum passing scores adopted by the professional educator standards board. A candidate may substitute a passing score on one or more sections of the Praxis I, *CBEST*® or *NES*® EAS for the equivalent passing score on the WEST-B.

(2) Candidates applying for a Washington state residency or professional teaching certificate under WAC 181-79A-257 (1)(b) who hold a certificate through the National Board for Professional Teaching Standards are exempt from the WEST-B requirement.

WSR 13-20-063
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Behavioral Health and Service Integration Administration)

[Filed September 26, 2013, 4:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-104.

Title of Rule and Other Identifying Information: The department is repealing WAC 388-800-0040 What is ADATSA?, 388-800-0045 What services are offered by ADATSA?, and 388-800-0120 As an eligible ADATSA client, when would I get state-funded medical assistance?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on November 5, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 6, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 5, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 22, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing these sections because the legislature did not appropriate any funds for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program in the new biennium budget. ADATSA-related medical care services recipients will be medicaid eligible under the Affordable Care Act (ACA) starting January 1, 2014.

Reasons Supporting Proposal: The ADATSA program has been repealed due to lack of legislative appropriation. Individuals eligible under the ADATSA program will be covered under the federal ACA rules beginning January 1, 2014.

Statutory Authority for Adoption: RCW 41.05.021, 74.04.050, Patient Protection and ACA established under Public Law 111-148; 42 C.F.R. § 431, 435, and 457, and at 45 C.F.R. § 155.

Statute Being Implemented: RCW 41.05.021, 74.04.050, 74.08.090, 74.09.035, 74.09.530; Patient Protection and ACA established under Public Law 111-148; 42 C.F.R. § 431, 435, and 457, and at 45 C.F.R. § 155.

Rule is necessary because of federal law, Patient Protection and ACA.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Pete Marburger, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1513.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The content of the rule is explicitly and specifically dictated by statute (RCW 74.04.057). Beginning January 1, 2014, an individual eligible for the ADATSA program may be considered medicaid eligible under the new ACA rules. Under RCW 34.05.328 (5)(b)(v), a cost-benefit analysis [small business economic impact statement] is not required.

A cost-benefit analysis is not required under RCW 34.05.328. State funding for the ADATSA program was not legislatively appropriated beginning January 1, 2014. Individuals eligible under the ADATSA program will be covered under the federal ACA rules beginning January 1, 2014. Under RCW 19.85.025(3), a small business economic impact statement [cost-benefit analysis] is not required.

September 23, 2013
Katherine I. Vasquez
Rules Coordinator

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-800-0040	What is ADATSA?
WAC 388-800-0045	What services are offered by ADATSA?
WAC 388-800-0120	As an eligible ADATSA client, when would I get state-funded medical assistance?

WSR 13-20-082
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed September 30, 2013, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-106.

Title of Rule and Other Identifying Information: Assisted living facilities rules: WAC 388-78A-2020 Definitions, 388-78A-2035 Disclosure statement to nonresident individuals, 388-78A-2440 Resident register, 388-78A-2460 Quality assurance committee, 388-78A-2474 Training and home care aides certification requirements, 388-78A-2730 Licensee's responsibilities, 388-78A-3180 Required enforcement remedies, and other related rules as appropriate.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on November 26, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 27, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 26, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by November 5, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to comply with and be consistent with newly passed state laws SB [SSB] 5077 Gender-neutral terms; HB [SHB] 1629 Concerning credentialing and continuing education requirements for long-term services; and SB 5510 Vulnerable adults—Abuse.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Statute Being Implemented: Chapter 18.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Jeanette K. Childress, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2591; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

September 19, 2013
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 13-21 issue of the Register.

WSR 13-20-083
PROPOSED RULES
DEPARTMENT OF EARLY LEARNING
[Filed September 30, 2013, 9:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-070.

Title of Rule and Other Identifying Information: Chapter 170-297 WAC, revising rules on communicable disease to align with recent department of health changes to chapter 246-110 WAC; clarifying rules on the requirement for directors, site coordinators, and lead teachers to complete twenty hours of state registry training system (STARS) training.

Hearing Location(s): Department of Early Learning (DEL), State Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 5, 2013, at 12 p.m.

Date of Intended Adoption: Not earlier than November 5, 2013.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by November 5, 2013.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by October 29, 2013, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align chapter 170-297 WAC with department of health changes to chapter 246-110 WAC by replacing references to "communicable disease" and replacing them with "contagious disease." To clarify rules on the requirement for directors, site coordinators, and lead teachers to complete twenty hours of STARS training.

Reasons Supporting Proposal: Rule making is necessary because the department of health has amended its terminology regarding disease by substituting the term "contagious disease" for "communicable disease." Alignment of DEL's licensing rules with these changes is necessary in order to ensure that disease terminology is clear to child care providers. Rule making on the requirement for directors, site coordinators, and lead teachers to complete twenty hours of STARS training is necessary in order to clarify when training must be completed and when an exemption to the training must be requested.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Admin., DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

September 30, 2013
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-1720 Lead teachers. (1) Lead teachers may be employed to be in charge of a child or a group of children.

(2) The lead teacher must have the understanding, ability, physical health, emotional stability and good judgment to meet the needs of the children in care.

(3) Lead teachers must:

(a) Be eighteen years of age or older;

(b) Have one year experience in school-age care;

(c) Have a TB test as required under WAC 170-297-1750;

(d) Have a background clearance as required under chapter 170-06 WAC;

(e) Have current CPR and first-aid certification as required under WAC 170-297-1825;

(f) Complete HIV/AIDS training and annual bloodborne pathogens training as required under WAC 170-297-1850;

(g) Have a high school diploma or equivalent;

(h) Complete twenty hours of STARS training within ((~~six~~)) three months of assuming the position of lead teacher;

(i) Complete ongoing training hours as required under WAC 170-297-1800;

(j) Have a food worker card, if applicable; and

(k) Attend an agency orientation as required under WAC 170-297-5800.

(4) Lead teachers are counted in the staff-to-child ratio.

(5) When the site coordinator is off-site or unavailable, lead teachers may assume the duties of site coordinator when they meet the site coordinator minimum qualifications, and may also serve as child care staff when the role does not interfere with management and supervisory responsibilities.

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-1775 Basic twenty hour STARS training. (1) Prior to working unsupervised with children the director, site coordinator, and lead teacher must register in MERIT ((~~and:~~

~~(1)~~)).

(2) The director, site coordinator, and lead teacher must complete the basic twenty hours of STARS training((~~; or~~

~~(2)~~)) within three months of assuming the position.

(3) If the director, site coordinator, or lead teacher qualifies for an exemption to the STARS training requirement, he or she must request an exemption to the ((~~STARS training~~)) requirement within ten days of assuming the position.

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-2250 Reporting incidents to a child's parent or guardian and the department. (1) The licensee or designee must report to a child's parent or guardian and the department:

(a) Immediately:

(i) Any incident reported under WAC 170-297-2200, after calling 911;

(ii) Any incident reported under WAC 170-297-2225, after calling 911 and Washington poison center;

(iii) A child's demonstrated acts, gestures or behaviors that may cause serious intentional harm to self, others or property; and

(iv) Use of physical restraint on a child;

(b) Within twenty-four hours:

(i) Injury or other health concern to a child that does not require professional medical treatment (report to parent only);

(ii) Change in child care staff that may impact child care staffing;

(iii) Change in the program phone number or e-mail; and

(iv) Child's exposure to a reportable ((~~communicable~~)) contagious disease from the list in WAC 246-110-010(((~~4~~))).

(2) The licensee must notify the department when liability insurance coverage terminates within thirty days of termination.

(3) The licensee must give a child's parent or guardian written notice when liability insurance coverage lapses or is terminated within thirty days of lapse or termination.

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-3200 Health plan. (1) A written health plan must be in place for the program and contain the following:

(a) ((~~Communicable~~)) Contagious disease notification under WAC 170-297-3210;

(b) Exclusion of ill person under WAC 170-297-3210;

(c) Exclusion of person diagnosed with a notifiable condition under WAC 170-297-2325;

(d) Immunization tracking under WAC 170-297-3250 through 170-297-3300;

(e) Medication management under WAC 170-297-3315 through 170-297-3550;

(f) Medication storage under WAC 170-297-3325;

(g) Injury treatment under WAC 170-297-3575 through 170-297-3600;

(h) Abuse and neglect protection and training under WAC 170-297-6275;

(i) Caring for children with special needs under WAC 170-297-0050;

(j) Care for animals on the premises;

(k) Handwashing and hand sanitizers under WAC 170-297-3625 through 170-297-3650;

(l) Food and food services;

(m) How general cleaning will be provided and how areas such as food contact surfaces, kitchen equipment, toys, and toileting equipment, will be cleaned and sanitized; and

(n) Cleaning and sanitizing laundry under WAC 170-267-3850.

(2) The health plan must be reviewed and dated by a physician, a physician's assistant, or a registered nurse and submitted to the department every three years.

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-3210 ((~~Communicable~~)) Contagious disease procedure. (1) When a licensee or program staff person becomes aware that any program staff person or child in care has been diagnosed with any of the ((~~communicable~~)) contagious diseases as defined in WAC 246-110-010, the licensee or designee must:

(a) Notify parents or guardians of each of the children in care within twenty-four hours; and

(b) Follow the health policy before providing care or before readmitting the program staff person or child into the child care.

(2) The licensee's health policy must include provisions for excluding or separating a child or program staff person with a ((~~communicable~~)) contagious disease. Children with any of the following symptoms must be excluded from care until guidelines permit readmission:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

(i) Earache;

(ii) Headache;

(iii) Sore throat;

(iv) Rash; or

(v) Fatigue that prevents the individual from participating in regular activities;

(b) Vomiting that occurs two or more times in a twenty-four hour period;

(c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period; or

(d) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 12-23-057, filed 11/19/12, effective 12/20/12)

WAC 170-297-4850 Pet and other animal health and safety. (1) Pets that have contact with children must:

(a) Have current immunizations for ((~~communicable~~)) contagious diseases;

(b) Show no signs of disease, worms or parasites; and

(c) Have veterinarian documentation that the pet is non-aggressive.

(2) Children and program staff must wash their hands as required under WAC 170-297-3650 before and after handling or feeding pets or handling pet toys or equipment.

(3) Programs that are on school district property must follow the school district's policy for pets.

WSR 13-20-084
PROPOSED RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed September 30, 2013, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-020.

Title of Rule and Other Identifying Information: WAC 246-840-125 Retired active status, this proposed new rule establishes a retired active status for registered nurses and licensed practical nurses and sets requirements for continuing competency associated with this status.

Hearing Location(s): Capitol Room, Doubletree by Hilton Hotel (formerly Phoenix Inn Suites), 415 Capitol Way North, Olympia, WA 98501, on November 8, 2013, at 1:30 p.m.

Date of Intended Adoption: November 8, 2013.

Submit Written Comments to: Teresa Corrado, P.O. Box 47864, Olympia, WA 98504-7864, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-4738, by November 1, 2013.

Assistance for Persons with Disabilities: Contact Michael Hively by November 1, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule establishes a new retired active license status for registered nurses and licensed practical nurses. The rule allows these nurses to practice on an intermittent or emergent basis, yet retain competency through continuing education and practice hours. It gives direction to nurses on the limits of a retired active status, renewal process, and reinstatement process. Fees for this new credential are being adopted separately.

Reasons Supporting Proposal: There is a need to have competent and knowledgeable nurses whose licenses can be activated quickly in a time of emergency or who can fulfill intermittent roles. There are many retired nurses who are unable to meet the required experience hours for an active license, but would like to continue to serve their communities as nurses. This rule will increase the availability of health care providers to Washington state patients.

Statutory Authority for Adoption: RCW 18.130.250 and 18.79.110.

Statute Being Implemented: RCW 18.130.250.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Paula Meyer, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4713.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule

would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Teresa Corrado, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4708, fax (360) 236-4738, e-mail teresa.corrado@doh.wa.gov.

Paula R. Meyer, MSN, RN
Executive Director

NEW SECTION

WAC 246-840-125 Retired active credential. (1) A registered or licensed practical nurse may place their credential in "retired active" status by meeting the requirements of this section.

(2) A registered or licensed practical nurse who holds a retired active credential may only practice in intermittent or emergent circumstances.

(a) Intermittent means the registered or licensed practical nurse will practice no more than ninety days a year.

(b) Emergent means the registered or licensed practical nurse will practice only in emergency circumstances such as earthquakes, floods, times of declared war, or other states of emergency.

(3) To obtain a retired active credential a registered or a licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-120.

(b) Pay the appropriate fee in WAC 246-840-990.

(4) To renew a retired active credential the registered nurse or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-130. The retired active credential fee is in WAC 246-840-990.

(b) Have completed forty-five hours of continuing education in compliance with WAC 246-840-203 (1)(a)(iii)(A) through (F). Education may include CPR and first aid.

(c) Demonstrate they have practiced at least ninety-six hours every three years. Practice may be paid or volunteer, but must require nursing knowledge or a nursing license.

(d) Renew their retired active credential every year on their birthday.

(5) To return to active status the registered or licensed practical nurse must:

(a) Meet the requirements in WAC 246-12-140. The active renewal fee is in WAC 246-840-990.

(b) Meet the continuing competency requirements in WAC 246-840-205.

(6) A registered or licensed practical nurse who holds a retired active credential is subject to a continuing competency audit.

(a) All late renewals and a percentage up to five percent of registered and licensed practical nurses renewing their license may be audited by the commission.

(b) A registered or practical nurse being audited will have thirty calendar days to complete and submit to the commission the audit form documenting at least ninety-six hours of active practice, and forty-five hours of continuing nursing education every three years. Active practice hours are not to exceed ninety days each year.

(c) To document practice hours and continuing nursing education a registered or licensed practical nurse shall comply with WAC 246-840-206 (4) and (5).

WSR 13-20-088
PROPOSED RULES
DEPARTMENT OF AGRICULTURE
[Filed September 30, 2013, 1:23 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Washington canola and rapeseed commission, chapter 16-573 WAC.

Hearing Location(s): Washington Potato Commission, 108 Interlake Road, Moses Lake, WA, on November 14, 2013, at 1:00 p.m.; and at the Omak City Hall, 2 North Ash Street, Omak, WA (please park on north side of fire hall), on November 15, 2013, at 1:00 p.m.

Date of Intended Adoption: February 27, 2014.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., November 20, 2013.

Assistance for Persons with Disabilities: Contact WSDA receptionist by November 1, 2013, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During past legislative sessions, significant amendments were made to the Washington canola and rapeseed commission's enabling statute, chapter 15.65 RCW. These statutory changes, in part, prompted the proposed amendments to chapter 16-573 WAC. The proposed amendments rename the commission to the "oilseeds commission" to more accurately capture the commodities covered; expand the commission's policy and purpose statements; update the definitions; reduce the number of board members and eliminate selection by district; expand the "affected area" to include the entire state of Washington; update the commission member selection process; add additional powers and duties to benefit the industry; update meeting and administrative procedures; and, other housekeeping changes. These proposed amendments are intended to achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order.

Reasons Supporting Proposal: The proposed amendments are intended to make the marketing order consistent with the commodity commission enabling statute, chapter 15.65 RCW, and to implement the petition received from the Washington canola and rapeseed commission in accordance with RCW 15.65.050.

Statutory Authority for Adoption: RCW 15.65.047 and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Any rule proposal that results from this rule-

making process will not be adopted unless the proposed rules are also approved in a referendum of affected oilseed producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington state canola and rapeseed commission, governmental.

Name of Agency Personnel Responsible for Drafting: Kelly Frost, P.O. Box 42560, Olympia, WA 98504, (360) 902-1802; Implementation and Enforcement: Washington Canola and Rapeseed Commission, Pasco, Washington, (509) 783-4676 and Department of Agriculture, Olympia, Washington, (360) 902-1802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Any adoption of the amendments to chapter 16-573 WAC would ultimately be determined by a referendum vote of the affected parties. A formal small business economic impact statement under chapter 19.85 RCW is not required because of the exemption granted in RCW 15.65.570(2).

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington canola and rapeseed commission are not named agencies in RCW 34.05.328 (5)(a)(i).

Don R. Hover
Director

Chapter 16-573 WAC

((~~CANOLA AND RAPESEED~~)) OILSEEDS COMMISSION

NEW SECTION

WAC 16-573-005 Marketing order for Washington oilseeds—Policy statement. (1) The marketing of canola, rapeseed, and mustard (oilseeds) within this state is in the public interest. It is vital to the continued economic well-being of citizens of this state and their general welfare that its canola, rapeseed, and mustard (oilseeds) industry be properly promoted by:

(a) Enabling producers of canola, rapeseed, and mustard (oilseeds) to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the oilseeds they produce; and

(b) Working towards stabilizing the agricultural industry by increasing production of oilseeds within the state.

(2) That it is in the overriding public interest that support for the oilseed industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that oilseeds be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's oilseeds;

(b) Increase the sale and use of Washington state's oilseeds in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's oilseeds;

(d) Increase the knowledge of the qualities and value of Washington state's oilseed products; and

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of oilseeds produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state oilseeds commodity board exists primarily for the benefit of the people of the state of Washington and its economy and, with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to oilseeds under the provisions of this marketing order.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-010 Definitions ((~~of terms~~)). ((~~For the purpose of this marketing order:~~)) The following definitions for terms used in this chapter must be interpreted as consistent with the definitions in chapter 15.65 RCW, Washington state agricultural commodity boards.

(1) "Director" means the director of agriculture of the state of Washington or the director's duly appointed representative.

(2) "Department" means the department of agriculture of the state of Washington.

(3) "Act" means the Washington State Agriculture Enabling Act ((~~of 1961~~)) or chapter 15.65 RCW.

(4) "Person" means any ((~~person~~)) individual, firm, association ((~~or~~)), corporation, limited liability company, trust, partnership, society, or any other organization of individuals or any unit or agency of local or state government.

(5) "((~~Affected~~)) Producer" means any person who produces, or causes to be produced, in commercial quantities, ((~~canola or rapeseed, or both~~)) oilseeds in the state of Washington. "To produce" means to act as a producer. For the purposes of this order, a "producer" is the same as an "affected producer" under chapter 15.65 RCW.

(6) "Commercial quantity" means all ((~~the canola or rapeseed~~)) oilseeds produced for market in any calendar year by any producer.

(7) "((~~Affected~~)) Handler" means any person who acts as principal or agent or otherwise in processing, selling, marketing or distributing ((~~canola or rapeseed~~)) oilseeds not produced by the handler and includes any lending agencies for a commodity credit corporation loan to producers. For the purposes of this chapter, a handler is the same as an "affected handler" under chapter 15.65 RCW. Handler does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(8) "((~~Canola and rapeseed commodity~~)) Board" ((~~referred to as "board"~~)) means the ((~~canola and rapeseed~~)) oilseeds commodity board formed under WAC 16-573-020.

(9) "((~~Canola or rapeseed" or "canola and rapeseed~~)) Oilseeds" means any of the *Brassica Sp.* oilseeds (canola and rapeseed) and all mustards, produced for use as oil, meal, planting seed, condiment, or other industrial or chemurgic uses((~~, and includes mustard~~)).

(10) "Marketing season" or "fiscal year" means the twelve-month period beginning on June 1 of any year and ending with the last day of May, both dates being inclusive.

(11) ((~~"Producer-handler" is both a "producer" and a "handler" with respect to canola and rapeseed and is covered by this order as a producer when engaged in the business of producing canola or rapeseed or a handler when engaged in processing, selling, marketing or distributing canola or rapeseed.~~

~~(12)~~)) "Affected area" means the ((~~following counties located in~~)) the state of Washington((~~: Adams, Asotin, Benton, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Klickitat, Lincoln, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman and Yakima~~)).

(((~~(13)~~))) (12) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(((~~(14)~~))) (13) "Affected unit" means one hundred pounds (hundredweight) of ((~~canola or rapeseed, or both~~)) oilseeds as defined in subsection (9) of this section.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-020 The ((~~canola and rapeseed~~)) oilseeds board. (1) **Administration.** The provisions of this order and the applicable provisions of the act is administered and enforced by the oilseeds board as the designee of the director.

(2) **Board membership.**

(a) The board shall consist of ((~~eight~~)) seven members((~~: Six members must be affected producers elected under provisions of this order. One member must be an affected handler appointed by the elected producers. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the department and the public.~~

~~(b) For the purpose of nomination and election of producer members of the board, the affected area of the state of Washington is divided into three representative districts as follows:~~

~~(i) District I must have two board members, being positions one and two and include the counties of Adams, Benton, Douglas, Franklin, Grant, Klickitat, Lincoln, and Yakima.~~

~~(ii) District II must have two board members, being positions three and four and include the counties of Ferry, Pend Oreille, Spokane, and Stevens.~~

~~(iii) District III must have two board members being positions five and six and include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.~~

~~(iv) The handler appointed by the elected producers will be position seven.~~)) as follows:

Position 1 is appointed by the director and must be a producer.

Position 2 is appointed by the director and must be a producer.

Position 3 is elected by the producers and must be a producer.

Position 4 is elected by the producers and must be a producer.

Position 5 is elected by the producers and must be a producer.

Position 6 is appointed by the director and must be a handler.

Position 7 is appointed by the director to represent the department and the public and must be neither a producer nor a handler.

(b) Transition to amended marketing order: The position numbers under the prior marketing order correspond to the positions under the amended marketing order as follow:

Prior Marketing Order Position	Amended Marketing Order Position
1	1
2	2
3	3
4	Eliminated
5	4
6	5
7	6
8	7

(c) Board members elected or appointed under the prior marketing order shall continue to serve their respective terms, provided that thirty days from the effective date of this amended marketing order, the board shall forward to the director the names of the board members elected or appointed to position 1, 2, and 6 under this amended marketing order, whereupon the director will appoint the members to serve their respective terms. The qualifications required for each position under this amended marketing order become effective upon expiration of any terms starting under the prior marketing order. Any vacancies on the effective date of this amended marketing order must be filled in conformance with this amended marketing order.

(3) **Board membership qualifications.**

(a) ((~~The affected producer members~~)) At the time of election or appointment to the board, the producer members of the board must be ((~~practical producers of canola or rapeseed~~)) actually engaged in producing oilseeds in the ((~~district in and for which they are nominated and elected and must be~~)) state of Washington; citizens and residents of the state ((~~of Washington,~~)); over the age of ((~~twenty-five~~)) eighteen years((~~, each of whom is and has been actually engaged in producing canola or rapeseed within the state of Washington for a period of five years and has during that time~~)); and not handlers or dealers of oilseeds. Further, the producer members must have derived a substantial portion of ((~~their~~)) income ((~~therefrom and who is not engaged in business as a handler or other dealer~~)) from actually producing oilseeds in Washington during the preceding five-year period.

(b) ((~~The affected~~)) At the time of appointment to the board, the handler member of the board must be ((~~a practical handler of canola or rapeseed and must be a citizen and resident of~~)) actually engaged in handling oilseeds in the state of Washington, ((~~over the age of twenty-five years and who is and has been,~~)) either individually or as an officer or an employee of a corporation, firm, partnership, association or

cooperative ((~~actually engaged in handling canola or rapeseed within~~)); a citizen and resident of this state; and over the ((~~state~~)) age of ((~~Washington for a period of five~~)) eighteen years ((~~and has during that period~~)). Further, the handler member must have derived a substantial portion of ((~~their~~)) income ((~~therefrom~~)) from actually handling oilseeds in Washington during the preceding five-year period.

(c) Board members must meet the qualifications of board members ((~~of the board must continue during~~)) throughout their term of office.

(4) **Term of office.**

((~~(a)~~)) The term of office for members of the board is three years((~~, and one-third of the membership as nearly as possible must be elected each year.~~

~~(b) Membership positions on the board are designated numerically; affected producers will have positions one through six, the affected handler will have position seven and the member appointed by the director will have position eight.~~

~~(c) The term of office for the initial board members must be as follows:~~

~~Positions one and three - One year, ending on May 31, 1999;~~

~~Positions two and five - Two years, ending on May 31, 2000;~~

~~Positions four, six and seven - Three years, ending on May 31, 2001.~~

~~(d) No elected producer member of the board can serve more than two full consecutive three-year terms~~)) beginning under this amended marketing order as follows:

Positions 1 and 3: First term expires May 31, 2014;

Positions 2 and 4: First term expires May 31, 2015;

Positions 5 and 6: First term expires May 31, 2016.

(5) **Nomination ((~~and election~~)) of board members.**

(a) Each year the director shall call for nomination meetings ((~~in those districts whose~~)) for board ((~~members term is~~)) position terms that are about to expire, regardless of whether the position is elected or director appointed. The meeting(s) must be held at least thirty days in advance of the date set by the director for the election ((~~of board members~~)) or advisory vote.

(b) Notice of ((~~every~~)) a nomination meeting must be published in newspapers of general circulation within the affected ((~~district~~)) area at least ten days in advance of the date of the meeting and in addition, written notice of every meeting must be given to all affected producers ((~~within the affected district~~)) according to the list maintained by the ((~~director under~~)) board pursuant to RCW ((~~15.65.200 of the act~~)) 15.65.295.

((~~Nonreceipt of notice by any~~)) (c) A finding that an interested person did not receive notice will not invalidate the proceedings at the nomination meeting.

(d) Any ((~~qualified affected~~)) producer may ((~~be nominated~~)) nominate a qualified producer orally for membership on the board at the nomination meeting((~~s~~)). Nominations may also be ((~~made within five days after the meeting~~)) by written petition ((~~filed with the director,~~)) signed by at least five ((~~affected~~)) producers((~~. At the inception of this order, nominations may be made at the issuance hearing~~)) and filed with the director within five days after the nomination meeting.

(((~~(b)~~))) (e) If the board moves and the director approves that the nomination meeting procedure be ((~~deleted~~)) waived, the director shall give notice of the vacancy by mail to all ((~~affected~~)) producers. Nominating petitions for producers or handlers must be signed by at least five affected producers ((~~of the district from which the candidate will be elected~~)) or handlers, as applicable. The final date for filing nominations must be at least twenty days after the notice was mailed.

(f) When only one nominee is nominated for any position, RCW 15.65.250 applies and the director shall determine whether the nominee meets the qualifications for the position and, if so, declare the nominee elected or appoint the nominee to the position.

(6) **Election or advisory vote of board members.**

(a) ((~~Members of the board must be elected~~)) Elections and advisory votes must be conducted by secret mail ballot within the month of April under the supervision of the director. ((~~Affected~~)) Elected producer members of the board must be elected by a majority of the votes cast by the ((~~affected~~)) producers ((~~within the affected district~~)). Each ((~~affected~~)) producer is entitled to one vote.

(b) If a nominee does not receive a majority of the votes on the first ballot a runoff election must be held by mail in a similar manner between the two candidates for the position receiving the largest number of votes.

(c) If more than two candidates are nominated for any director-appointed producer or handler board member position, an advisory vote must be conducted under RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. If only two candidates are nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership must be published in a newspaper of general circulation within the affected ((~~district~~)) area at least ten days in advance of the date of the election or advisory vote. At least ten days before every election for board membership, the director shall mail a ballot of the candidates to each ((~~affected~~)) producer entitled to vote whose name appears upon the list of the ((~~affected~~)) producers maintained by the ((~~director in accordance with RCW 15.65.200 of the act~~)) board pursuant to RCW 15.65.295. Any other ((~~affected~~)) producer entitled to vote may obtain a ballot by application to the director upon establishing their qualifications.

((~~Nonreceipt of a ballot by an affected~~)) (e) A finding that a producer did not receive a ballot will not invalidate the election or advisory vote of any board member.

(((~~(d) The appointed handler member of the initial board shall be elected by a majority of the elected members at the first meeting.~~)))

(7) **Vacancies ((~~prior to election~~)).**

(a) In the event of a vacancy on the board in an elected position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the first or second board meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the remaining board members will recommend to the director a qualified person for appointment to the vacant position. The director will appoint the person recommended by the board unless the person fails to meet the qualifications of board members under RCW 15.65 and this order.

(8) **Quorum.** A majority of the members is a quorum for the transaction of all business and to execute the duties of the board.

(9) **Board compensation.** No board member ((~~of the board~~)) will receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board, in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt by resolution a provision for reimbursement of actual travel expenses incurred by members and employees of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270.

(10) **Powers and duties of the board.** The board shall have the following powers and duties:

(a) To administer, enforce and control the provisions of this order as the designee of the director.

(b) To elect a chair and other officers as the board deems advisable.

(c) To employ and discharge at its discretion the personnel, including attorneys engaged in the private practice of law subject to the approval and supervision of the attorney general, as the board determines are necessary and proper to execute the purpose of the order and effectuate the declared policies of the act.

(d) To pay only from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration and enforcement of the order. The expenses and costs may be paid by check, draft or voucher in the form and the manner and upon the signature of the person as the board may prescribe.

(e) To reimburse any applicant who has deposited money with the director to defray the costs of formulating the order.

(f) To establish ((~~a~~)) an "((~~canola and rapeseed~~)) oilseed board marketing revolving fund" and to deposit the fund in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except as the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day or as often during the day as advisable.

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice accurate records of all assessments, collections, receipts, deposits, withdrawals, disbursements, paid outs, moneys and other financial transactions made and done under this order. The records, books and accounts must be audited ((~~at least annually~~)) subject to procedures and methods lawfully prescribed by the state auditor. The books and accounts must be closed as of the last day of each fiscal year of the ((~~state of Washington~~)) commission. A copy of the audit shall be delivered within thirty days after completion to the governor, the director, the state auditor and the board.

(h) To require a bond of all board members and employees of the board in a position of trust in the amount the board may deem necessary. The premium for the bond or bonds must be paid by the board from assessments collected. The bond may not be necessary if any board member or employee is covered by any blanket bond covering officials or employees of the state of Washington.

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year.

(j) To establish by resolution a headquarters which shall continue unless changed by the board. All records, books and minutes of board meetings must be kept at the headquarters.

(k) To adopt rules of a technical or administrative nature, under chapter 34.05 RCW (Administrative Procedure Act).

(l) To execute RCW 15.65.510 covering the obtaining of information necessary to effectuate the order and the act, along with the necessary authority and procedure for obtaining the information.

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed by the act or order.

(n) To confer with and cooperate with the legally constituted authorities of other states and of the United States ((~~to~~)) for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements or orders.

(o) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order.

(p) To enter into contracts and interagency agreements with any private or public agency, whether federal, state, or local. Purchasing and contracting must comply with chapter 39.26 RCW.

(q) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies.

(r) To enter into contracts of agreements for research in the production, irrigation, processing, transportation, marketing, use, or distribution of oilseeds.

(s) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this order.

(t) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of oilseeds including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission.

(u) To maintain a list of names and addresses of producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.65.280.

(v) To maintain a list of names and addresses of all persons who produce oilseeds and the amount, by unit of oilseeds produced during the past three years pursuant to RCW 15.65.295.

(w) To establish a foundation using commission funds as grant money for the purposes established in this marketing order.

(x) To execute any other grant of authority or duty provided designees and not specifically set forth in this section.

(11) **Procedures for board.**

(a) The board shall hold regular meetings, at least quarterly, with the time and date fixed by resolution of the board and held in accordance with chapter 42.30 RCW (Open Public Meetings Act). The board shall file notice of the time and place of regular meetings with the code reviser on or before January of each year for publication in the state register. The board shall publish notice of any change from such meeting schedule in the state register for distribution at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual meeting, at which time an annual report will be presented. The proposed budget must be presented for discussion at the meeting. The board must give notice of the annual meeting ((~~must be given by the board~~)) at least ten days prior to the meeting by written notice to each producer ((~~and by notifying the regular news media~~)).

(c) The board shall establish by resolution the time, place, and manner of calling special meetings of the board with reasonable notice to the members. ((~~The~~)) Any board member may waive, in writing, notice of any special meeting ((~~may be waived by a written waiver from each member of the board~~)). Notice of special meetings must comply with chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-030 Marketing order purposes. ((~~The~~)) This marketing order is to promote the general welfare of the state((~~, to enable producers of canola and rapeseed to help themselves establish orderly, fair, sound, efficient, unhampered marketing, grading and standardization of canola or rapeseed, or both. To execute the purposes of the order, the board shall provide for a program in one or more of the following areas~~)) and for the purpose of maintaining existing markets or creating new or larger local, domestic and foreign markets; or increasing production efficiency, ensuring a fair regulatory environment; or increasing per capita use of oilseed products grown in Washington state. The Washington state oilseeds board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) Establish plans and conduct programs for ((~~advertising~~)) marketing, sales, promotion or other programs for maintaining present markets or creating new or larger markets for ((~~canola or rapeseed, or both~~)) oilseeds. The programs shall be directed toward increasing the sale of ((~~canola and rapeseed~~)) oilseeds without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims in behalf of ((~~canola or rapeseed~~)) oilseeds nor disparage the quality, value, sale or use of any other agricultural commodity.

(2) Provide for research in the production, processing, irrigation, transportation, handling or distribution of ((~~canola and rapeseed~~)) oilseeds and expend the necessary funds for ((~~the~~)) such purposes. Insofar as practicable, the research must be carried out by ((~~experiment stations of~~)) Washington State University, but if in the judgment of the board ((~~that the experiment station do~~)) the Washington State University does not have adequate facilities for a particular project or if some other research agency has better facilities ((~~therefor~~)), the project may be carried out by other research agencies selected by the board.

(3) ((~~Provide by rules for:~~

~~(a) Establishing uniform grades and standards of quality, condition, maturity, size, weight, pack, packages and, or label for canola and rapeseed or any products thereof;~~

~~(b) Requiring producers, handlers or other persons to conform to the grades and, or standards in packing, packaging, processing, labeling, selling or otherwise commercially disposing of canola or rapeseed in offering, advertising and delivering it therefor;~~

~~(c) Providing for inspection and enforcement to ascertain and effectuate compliance;~~

~~(d) Establishing rules respecting the foregoing;~~

~~(e) Providing that the board shall execute inspection and enforcement of, and may (within the general provisions of the order) establish detailed provisions relating to, the standards and grades and the rules. Any modification not of a substantial nature, such as the modification of standards within a certain grade may be made without a hearing and shall not be considered an amendment for the purposes of the act and order.~~

~~(4)~~)) Provide for the prevention, modification or removal of trade barriers which obstruct the free flow of the affected commodity to market.

(((~~(5) Provide for marketing information and services to affected producers and for the verification of grades, standards, weights, tests and sampling of quality and quantity of canola and rapeseed purchased by handlers from affected producers.~~

~~(6)~~)) (4) Conduct programs for the purpose of providing information and education including:

(a) Marketing information and services for producers of oilseeds for the verification of grades, standards, weights, tests and sampling of quality and quantity of oilseeds purchased by handlers from producers;

(b) Information and services enabling producers to meet their resource conservation objectives;

(c) Oilseed-related education and training.

(5) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of oilseeds produced in Washington state to any elected official or officer or employee of an agency.

(6) The director shall approve any plans, programs, and projects concerning:

(a) The establishment, issuance, effectuation and administration of programs authorized under this section for advertising and promotion of oilseeds.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of oilseeds may be encouraged, expanded, improved, or made more efficient.

(7) Prohibit making or publishing false or misleading advertising. The regulation may authorize uniform trade practices applicable to all similarly situated handlers and, or other persons.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-040 Assessments and collections. (1) **Assessments.**

(a) The assessment on all varieties of ((~~canola or rapeseed~~)) oilseeds subject to this marketing order shall be ten cents per hundredweight and shall be deducted by the first purchaser from the price paid to the grower. The assessment shall be remitted to the board in accordance with procedures adopted by the board.

(b) The assessments shall not be payable on any ((~~canola or rapeseed~~)) oilseeds used by the ((~~affected~~)) producer on their premises for feed, seed and personal consumption.

(2) **Collections.** Excess moneys collected by the board under ((~~the~~)) this order during the fiscal year may be carried over and used during the next successive fiscal year. The board may also recommend that excess moneys at the close of a fiscal year be refunded on a pro rata basis to the ((~~affected~~)) producers from whom the moneys were collected.

(3) **Penalties.** Any due and payable assessment levied in the specified amount as may be determined by the board under the act and ((~~the~~)) this order is a personal debt of the person assessed or who owes the debt, and it is due and payable to the board when payment is called for by the board. If a person fails to pay the board the full amount of the assessment by the date due, the board may add to the unpaid assessment or sum an amount not exceeding ten percent of the amount owed. In the event of failure of the person or persons to pay the full amount due, the board may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent ((~~thereon~~)), and the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-041 Time—Place—Method for payment and collection of assessments. Effective with the growing season of 1998, the following procedure is established for the reporting and paying of assessments levied pursuant to RCW 15.65.410 and WAC 16-573-040:

(1) All first handlers of ((~~canola and rapeseed~~)) oilseeds grown in the state of Washington, or the person acting on behalf of a first buyer, shall withhold the amount of assessment from their remittance to growers of ((~~canola or rapeseed~~)) oilseeds and transmit it to the board.

(2) All assessments will be due and payable to the board within thirty days of collection. With the submission of the assessments, a report listing the name, address, volume handled or purchased and amount deducted or collected for each producer must be submitted to the board on forms provided by or approved by the board.

(3) Any assessments paid after the above deadlines shall be accompanied by a penalty fee of ten percent in accordance with RCW 15.65.440 of the act.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-060 Termination of the order. ((~~The order shall be terminated if the director finds that fifty-one percent by numbers and fifty-one percent by volume of production of the affected producers favor or assent to the dissolution. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether the termination is so assented to or favored whenever twenty percent by numbers or twenty percent by volume of production of the affected producers file written application with the director for the termination. The termination shall not, however, become effective until the expiration of the marketing season.~~)) Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.

AMENDATORY SECTION (Amending WSR 98-04-093, filed 2/4/98, effective 6/1/98)

WAC 16-573-080 ((~~Separability~~)) Severability. If any provisions of the order are declared invalid, or the applicability to any person, circumstances or thing is held invalid, the validity of the remainder provisions or of the applicability to any other person, circumstances or thing shall not be affected.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-573-070 Effective time.

WSR 13-20-097
PROPOSED RULES
CRIMINAL JUSTICE TRAINING COMMISSION

[Filed October 1, 2013, 8:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-029.

Title of Rule and Other Identifying Information: WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification.

Hearing Location(s): Washington State Criminal Justice Training Commission, Room E-154, 19010 1st Avenue South, Burien, WA 98148, on December 11, 2013, at 10 a.m.

Date of Intended Adoption: December 11, 2013.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by December 6, 2013.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by December 9, 2013, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will allow for a subsequent petition for reinstatement of certification to be filed five years after the date of the entry of the hearing panel's final written order denying the prior petition for reinstatement. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept for filing a petition for reinstatement submitted after two prior petitions have been denied.

Reasons Supporting Proposal: The current rule does not outline steps for filing a subsequent petition for reinstatement of certification after a hearing panel has denied the initial petition for reinstatement.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sonja Hirsch, Burien, Washington, (206) 835-7372.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

October 1, 2013
Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification. (1) The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.

(2) Upon receipt of a petition for eligibility for certification or reinstatement of certification, and a determination by commission staff that a hearing is necessary((,)) or required, the peace officer and the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision ((~~whether to certify or reinstate the peace officer,~~)) to grant or deny the petition and the reasons for the decision. Where the ((~~peace officer is not certified or reinstated~~)) petition is denied, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that ((~~certification is not being granted or reinstated~~)) the petition was denied.

(3) Hearings on eligibility for certification or reinstatement of certification shall be conducted by a hearing panel. The hearing panel shall review the certification file and any additional information submitted by the parties prior to the hearing and may request any additional information in order to assist in its determination. The issues shall be limited to whether the peace officer is eligible for ((~~certification or reinstatement of~~)) certification, whether certification should be reinstated, and whether appropriate probationary terms ((~~in the event certification is granted or reinstated~~)) should be imposed as a condition of reinstatement.

(4) The hearing panel shall enter ((~~a~~)) its decision on the petition by written order ((~~regarding certification or reinstatement of certification~~)) within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties((~~,~~)) and to the peace officer's employing agency.

(5) The decision of the hearing panel shall be the final order of the commission.

(6) A peace officer whose petition for eligibility for certification or reinstatement of certification was denied by a hearing panel may file a subsequent petition after five years have elapsed since the date of the entry of the hearing panel's final written order denying the prior petition. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept for filing a petition for reinstatement submitted after two prior petitions have been denied.

WSR 13-20-112
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed October 1, 2013, 1:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-033.

Title of Rule and Other Identifying Information: Amendment of rules in chapter 192-220 WAC relating to penalties for claimants who commit unemployment insurance fraud.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on November 14, 2013, at 10:00 a.m.

Date of Intended Adoption: November 18, 2013.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 13, 2013.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by November 13, 2013, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: State and federal [laws] now require a monetary penalty for the first instance of fraud. The proposed changes make existing rules consistent with this requirement. The existing fraud rules only address penalties for second, third and subsequent instance of fraud.

Reasons Supporting Proposal: Rules implement sections 1 and 2, chapter 189, Laws of 2013 (SB 5355).

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.16.010 and 50.20.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules clarify penalties for fraud and how payments will be applied. There are no impacts on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The rules simply clarify policies and procedures and do not meet the definition of significant legislative rules under RCW 34.05.328.

October 1, 2013
Nan Thomas
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed? (1) RCW 50.20.070 provides ((~~for increasing disqualification periods and~~)) dollar penalties when ((~~a second, third or subsequent~~)) fraud is committed and increased disqualification periods when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the ((~~factors~~)) criteria in this section.

(2) Once the department mails a fraud decision, any fraud that is found for weeks filed before, or within fourteen days after, the mailing date of the decision will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is mailed on June 1 for weeks claimed on April 30. On July 1, a decision is mailed assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was mailed.

(3) The department will treat any fraud for weeks filed more than fourteen days after the mailing date of a prior fraud decision as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is mailed assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than fourteen days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. In addition to the fifteen percent penalty, the disqualification period is twenty-six weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of twenty-six weeks and a penalty of fifteen percent beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of fifty-two weeks beginning with the week of July 10 and a penalty of twenty-five percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-220-045 How is the fraud penalty calculated?—RCW 50.20.070. (1) The department will assess the penalty established under RCW 50.20.070 for ((~~second, third, or subsequent occurrences of~~)) fraud based on a percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(a) For a first occurrence, the penalty is fifteen percent of benefits overpaid.

(b) For a second occurrence, the penalty is twenty-five percent of benefits overpaid.

(((~~b~~))) (c) For a third or subsequent occurrence, the penalty is fifty percent of benefits overpaid.

(2) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

AMENDATORY SECTION (Amending WSR 07-23-128, filed 11/21/07, effective 1/1/08)

WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision? (1) The department will issue a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (twenty-six week disqualification and ((~~no~~)) a fifteen percent dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is mailed on August 1 and benefits are denied for the following twenty-six weeks and a fifteen percent penalty is assessed. On August 10, another fraud decision is mailed which is considered part of the first occurrence and denies benefits for the twenty-six weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department

will issue a correction showing the twenty-six week denial period begins with the August 10 mailing date.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

WSR 13-20-113
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed October 1, 2013, 1:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-023.

Title of Rule and Other Identifying Information: Amending WAC 192-310-100 to require boat owners to notify their employees they are not covered by unemployment insurance under certain conditions.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on November 14, 2013, at 10:15 a.m.

Date of Intended Adoption: November 18, 2013.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 13, 2013.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by November 13, 2013, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: State law was amended to exempt some employment on small fishing vessels from unemployment insurance coverage. The purpose of the proposed rule is to provide these employees with notice of noncoverage.

Reasons Supporting Proposal: To provide employees of small fishing vessels that, under specific conditions, they will not be able to use their earnings from that job for an unemployment claim.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Chapter 75, Laws of 2013.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not establish a penalty for employers who do not provide notice.

A cost-benefit analysis is not required under RCW 34.05.328. The rule establishes a requirement that does not subject an employer to a sanction or penalty and does not meet the definition of significant legislative rules under RCW 34.05.328.

October 1, 2013
Nan Thomas
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-100 What notices does the department require or recommend employers to post? (Relating to RCW 50.20.140, 50.12.290, ((~~and~~)) 50.44.045, 50.24.160, and 50.04.170.)

(1) Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. The notices provide information to individuals who may be unemployed about how to apply for benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide required notices to employers without charge. The department will send required notices to employers when they file a master application for a business license registering for unemployment insurance. The department will send updated notices to employers when there are substantive changes in the information.

(3) The department may also make recommendations of additional materials to post.

(4) A church, a convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches shall display in a conspicuous place a poster giving notice that its employees are not considered in employment for purposes of unemployment insurance. The department shall make these posters available without charge.

(5)(a) The owner of a boat with an operating crew normally made up of fewer than ten individuals engaged in the catching of fish or other forms of aquatic animal life must provide the individual members of the operating crew written notice, or post such notice in a conspicuous place, that states these individuals are not covered for unemployment insurance purposes unless the owner chooses to voluntarily cover them, when the operating crew receives no remuneration other than the following:

(i) A share of the boat's catch (or the catch of multiple boats if the fishing operation involves more than one boat); or

(ii) A share of the proceeds from the sale of the catch.

(b) The amount of the individual's share must depend on the amount of the boat or boats' catch.

(c) A notice that meets these requirements is available without charge on the department's web site.

WSR 13-20-114
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed October 1, 2013, 1:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-034.

Title of Rule and Other Identifying Information: Amending sections in chapter 192-250 WAC, Shared work program.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on November 14, 2013, at 10:30 a.m.

Date of Intended Adoption: November 18, 2013.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 13, 2013.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by November 13, 2013, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are made to chapter 192-250 WAC to implement chapter 79, Laws of 2013. Amendments are also made to clarify policy and streamline program operations.

Reasons Supporting Proposal: The rules implement chapter 79, Laws of 2013, which made a number of changes to the shared work program. The legislation requires that existing rules be updated to reflect these changes. Other changes are proposed to improve program operations, including eligibility for participation in the program.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Chapter 50.60 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have a disproportionate impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are amended for consistency with changes in state law, and make minor eligibility changes that do not meet the definition of a significant legislative rule as defined by RCW 34.05.328.

October 1, 2013
Nan Thomas
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 06-22-004, filed 10/19/06, effective 11/19/06)

WAC 192-250-005 Definitions. For purposes of this chapter:

(1) ((~~"Full-time employment" means paid time of thirty-five to forty hours each week.~~

~~(2)~~)) "General economic downturn" means a regional slowdown in work within an industry that is not due to factors that are typical for the industry or occupation.

(((~~(3)~~))) (2) "Permanent basis" means an employment relationship that is steady, stable, and not intentionally meant to be work of a temporary nature.

(3) "Seasonal employment" is defined in WAC 192-100-040.

AMENDATORY SECTION (Amending WSR 06-22-004, filed 10/19/06, effective 11/19/06)

WAC 192-250-010 What is the shared work program and who can participate? (1) The shared work program is a voluntary program that offers Washington employers an alternative to laying off skilled employees during periods of general economic downturn.

(2) An employer may reduce an employee's ((~~full-time~~)) usual weekly ((~~work~~)) hours of work from ten to fifty percent and the employee can receive the same percentage of unemployment benefits. For example, an eligible employee who ((~~normally~~)) usually works forty hours each week is reduced to thirty hours per week, a reduction of twenty-five percent. The employee is eligible to receive twenty-five percent of his or her weekly benefit amount, regardless of the wages earned that week.

(3) Both public and private sector employers are eligible to participate in the program.

(4) An employer or employers' association must submit a signed shared work plan application to the commissioner for approval. A plan that meets the approval criteria listed in RCW 50.60.030 and this chapter will be approved for a maximum of fifty-two weeks.

AMENDATORY SECTION (Amending WSR 06-22-004, filed 10/19/06, effective 11/19/06)

WAC 192-250-015 When is an employer eligible to participate in the shared work program? A business must be legally registered in the state of Washington for at least six months (one hundred eighty days) before applying for the shared work program. "Registration" includes being issued an employment security ((~~(ES) reference~~)) department (ESD) number as well as a unified business identifier (UBI) number.

AMENDATORY SECTION (Amending WSR 06-22-004, filed 10/19/06, effective 11/19/06)

WAC 192-250-020 What ((~~is~~)) are the criteria for having a shared work plan approved? In addition to the criteria listed in RCW 50.60.030, employers must:

(1) Be current in the payment of all unemployment insurance taxes required under Title 50 RCW, or ((~~have~~)) be current on an approved deferred payment contract on file with the department;

(2) Include their ((~~ES reference~~)) ESD number on the plan application; and

(3) Designate a representative to be a liaison between the department and the employees who participate in the shared work plan.

AMENDATORY SECTION (Amending WSR 06-22-004, filed 10/19/06, effective 11/19/06)

WAC 192-250-025 What are the requirements for employers with an approved shared work plan? (1) **What information am I responsible for providing to my employ-**

ees? When your shared work plan is approved, you are responsible for telling your affected employees:

(a) They are approved for participation in the shared work program;

(b) How to apply for shared work benefits; and

(c) How to file their weekly claims.

(2) **What employee fringe benefits do I have to provide while participating in the shared work program?**

(a) You must continue to provide your affected employees with health benefits ((~~and~~)) as though their weekly benefits had not been reduced.

(b) You must continue to provide your affected employees with retirement benefits for defined contribution and defined benefit pension plans under ((~~Section 3(35) of the Employee Retirement Income Security Act of 1974~~)) the Internal Revenue Service code. You must maintain these benefits for your shared work employees as though their weekly hours had not been reduced.

(((~~(b)~~))) (c) You must continue to provide paid vacation, holiday, and sick leave ((~~on~~)) to your affected basis under the same ((~~basis~~)) terms and conditions as before their hours were reduced.

(((~~(c)~~))) (d) If health, retirement, or leave benefits change for your other employees, you can change them for your shared work employees as well.

(e) Other benefits offered to your employees, such as long-term disability and life insurance, are optional. You may choose to provide these benefits but they are not a requirement for participation in the shared work program.

(3) **What is required if the business name is changed?** You must report any change in your business name to the shared work program unit within ten working days.

(4) **What is required if the designated employer representative is changed?** You must notify the shared work unit of the change within ten working days.

(5) **Can I modify an approved shared work plan?** ((~~Answering "yes" to plan modification on your application allows~~)) You may request to add additional employees or units of your business ((~~to be added~~)) after the approved plan start date. ((~~You may also modify the number of hours an employee works during a week according to the needs of your business.~~)) Adding new employees or units to an approved plan is subject to the same eligibility review that applied to the original plan. You must notify the shared work unit of any change to the information on your application in writing within ten working days.

(6) ((~~**Can I change the definition of full-time work for my employees?** No. Once you have established the number of hours that are full-time for the worker on the original application, this number may not be modified.~~

(~~7~~))) **What other information am I responsible for giving the department?** In addition to the application for participation in the program, you are responsible for verifying the information on the ((~~report of~~)) shared work payments report sent by the department. You must report any discrepancies to the shared work unit in writing within ten working days.

(((~~(8)~~))) (7) **How many shared work plans may I have?**

(a) You may have ((~~two~~)) more than one shared work ((~~plans within a three-year period beginning with the effective date of the first~~)) plan. We will review each shared work plan application to see if it meets the eligibility requirements. Even if a previous plan was approved, this does not mean subsequent plans are automatically approved.

(b) ((~~You will not be eligible for a new plan until at least twelve months after the expiration date of the second approved plan.~~

~~(c) A plan may be approved for up to twelve months from the effective date. Plans approved for fewer than twelve months still count as one plan.~~

~~(d)~~)) If your business is approved for a shared work plan, but your employees do not claim shared work benefits during the life of the plan, it will still be treated as one plan.

(((~~(e)~~))) (c) The commissioner may, ((~~in individual cases and~~)) at his or her discretion, ((~~waive the twelve month waiting period in subsection (b)~~))) deny approval of subsequent plans.

(((~~(9)~~))) (8) **What if my ((~~ES reference~~)) ESD number changes?** You must report the change to the shared work unit within ten working days. A change in ((~~ES reference~~)) ESD number represents a change in employer and the existing shared work plan will be canceled. The successor employer may submit a new shared work plan application to the department for review.

AMENDATORY SECTION (Amending WSR 06-22-004, filed 10/19/06, effective 11/19/06)

WAC 192-250-030 What are the grounds for revoking a shared work plan?—RCW 50.60.070. The department may revoke a shared work plan for good cause. In addition to the factors listed in RCW 50.60.070, "good cause" includes, but is not limited to:

(1) An employer's failure within ten working days to:

(a) Report a change in their ((~~ES reference~~)) ESD number.

(b) Report an impending sale or transfer of the business or company.

(c) Report a change in the designated employer representative.

(d) Provide wage and hour reports, documents, or other information needed by the shared work unit to decide if the employer or employee(s) is eligible for participation in the shared work program.

(e) Verify the information on the employer's shared work payments report, and notify the shared work unit of any discrepancies in writing.

(2) An employer's failure to maintain employee fringe benefits as required by WAC 192-250-025(2) while participating in the program.

AMENDATORY SECTION (Amending WSR 09-13-057, filed 6/12/09, effective 7/13/09)

WAC 192-250-035 Information for employees participating in an approved shared work plan. (1) ((~~**What are the requirements for participating in my employer's plan?** You must have at least four hundred sixty hours of work with this employer in the calendar quarter before the quarter in which your employer's application is submitted.~~

~~(2)~~)) **When do I apply for benefits?** Your employer representative will tell you if you need to apply for benefits and how to do so. If you have a current valid claim, you do not need to apply again.

(((~~3~~))) (2) **How do I file my weekly claim for benefits?** See WAC 192-140-005 for instructions on filing weekly claims. You must also report the number of hours you were paid for holidays, vacations, or sick leave. You must report hours and gross earnings for part-time and second jobs, plus your hours and net earnings from any self-employment. You can file weekly claims by telephone or over the internet.

(((~~4~~))) (3) **What happens if the total number of hours worked is not a whole number?** If the total number of hours you worked in a week includes a fraction of an hour, the department will round the total down to the next whole number. This rounded number will be compared to your usual hours of work to calculate your shared work benefit payment for the week. For example: You work 28.5 hours of a ((~~normal~~)) usual 40-hour work week. The 28.5 hours is rounded down to 28 hours and then divided by 40, meaning you worked 70 percent of the available hours. Your shared work payment would be 30 percent of your regular weekly benefit amount.

(((~~5~~))) (4) **What happens if I don't work all scheduled hours for my shared work employer?**

(a) You are not eligible for shared work benefits for any week that you do not work all hours you have been scheduled by your shared work employer.

(b) You must be available for additional hours of work, up to ((~~full-time~~)) your usual weekly hours of work, with the shared work employer. If your employer gives you at least twenty-four hours' notice that additional work is available and you do not work those additional hours, you are not eligible for shared work benefits for that week.

(c) When you are not eligible for shared work benefits in any week claimed, your claim will be processed as a regular unemployment claim.

(((~~6~~))) (5) **Do I have to look for work while participating in the shared work program?** No. You are not required to look for work while participating in the shared work program.

(((~~7~~))) (6) **Is there a minimum or maximum number of hours I can work in a week and still receive shared work benefits?** You must ((~~have twenty to thirty-six hours of paid time during a week~~)) work between ten percent and fifty percent of your usual weekly hours to receive shared work benefits. In any week you ((~~are paid for fewer than twenty hours or more than thirty-six hours~~)) work less than or more than that amount, your claim will be processed as a regular unemployment claim.

(((~~8~~))) (7) **How long can I receive shared work benefits?** You can receive shared work payments up to the maximum benefit entitlement established under Title 50 RCW, plus state or federal benefit extensions under chapter 50.22 RCW.

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-250-045 Who is not eligible for participation in the shared work program? (1) The following employees are not eligible for participation in the shared work program:

(a) Employees paid on any basis other than hourly wage. This includes, but is not limited to, employees paid on a piece rate, mileage rate, job rate, salary, or commission basis. The commissioner may waive this provision for employees paid ((~~on a piece rate basis~~)) as listed above if an hourly rate of pay can be established, except that salaried employees may participate only if they are eligible for paid overtime.

(b) Officers of the corporation that is applying for participation.

(c) Seasonal employees during the off season.

(2) The following businesses are not eligible for participation in the shared work program:

(a) For weeks of benefits paid before July 1, 2012, and after June 28, 2015, businesses with a tax rate of 5.4 percent or more, not including the social cost factor rate and taxes under RCW 50.24.010 and 50.24.014.

(b) Nonqualified employers, meaning employers who have reported no payroll for four consecutive quarters.

(c) Employers not registered in Washington for six months prior to application.

WSR 13-20-124
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed October 1, 2013, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-051.

Title of Rule and Other Identifying Information: Adopt new rules in chapter 192-320 WAC, Experience rating and benefit charging.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on November 14, 2013, at 11:00 a.m.

Date of Intended Adoption: November 18, 2013.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-9799, by November 13, 2013.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by November 13, 2013, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are adopted to implement section 3, chapter 189, Laws of 2013. The legislation provides that employers are not eligible for relief of unemployment benefit charges to their account if the employer fails to respond timely or adequately to a written request for information from the department and has established a pattern of such failures. The rules clarify how the department will determine whether an employer is ineligible for relief of benefit charges under these circumstances.

Reasons Supporting Proposal: The rules implement section 3, chapter 189, Laws of 2013, pertaining to circumstances under which an employer may be ineligible for relief of benefit charges. The change to state law was adopted to conform to changes in federal law.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Chapter 50.60 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have a disproportionate impact on small business.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

October 1, 2013
Nan Thomas
Deputy Commissioner

NEW SECTION

WAC 192-320-081 What constitutes an "event" for the purpose of determining if there is a pattern of failing to respond timely or adequately? (RCW 50.29.021(6)) (1) An event occurs if a benefit overpayment is created, and the employer or the employer's agent significantly contributed to the overpayment by failing to respond timely or adequately without good cause to the department's written request for information relating to a claim.

(2) When deciding if an event has occurred, there must be a decision made by the department resulting in a benefit overpayment.

(3) An event may occur even if the employer is not in the base year of the claim.

(4) The department must examine past events which contributed to benefit overpayments when deciding if a pattern exists.

NEW SECTION

WAC 192-320-082 How will the department determine good cause exists for failing to respond timely or adequately? (RCW 50.29.021(6)) (1) The department may find that good cause exists in certain situations when the employer fails to respond due to an unforeseen event outside of the employer's or the employer's agent's control, such as:

(a) The death or serious illness of the employer;

(b) Destruction of the employer's place of business or business records not caused by, or at the direction of, the employer or the employer's agent;

(c) Fraud or theft against the employer.

(2) The employer is responsible to provide all pertinent facts and evidence or documentation for the department to determine good cause.

NEW SECTION

WAC 192-320-083 What is a written request for information? (RCW 50.29.021(6)) For the purposes of this chapter, a written request for information relating to a claim is a paper or electronic transmission by the department requesting information from an employer or an employer's agent.

NEW SECTION

WAC 192-320-084 What is an employer's agent? (RCW 50.29.021(6)) For the purposes of this chapter, the employer's agent is the employer's designated representative responsible for providing information to the department.

WSR 13-20-125
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
[Filed October 1, 2013, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-027.

Title of Rule and Other Identifying Information: This rule amends and consolidates all rule making regarding semi-annual assessments, hourly examination fees, and other fees and charges in chapter 208-544 WAC. This rule also makes technical changes to chapter 208-544 WAC for purposes of clarity (including plain-language amendments and additions), and repeals WAC 208-512-045 for redundancy purposes.

Hearing Location(s): Department of Financial Institutions, 2033 Sixth Avenue, Suite 1030, Seattle, WA 98121, on November 6, 2013, at 10:00 a.m.

Date of Intended Adoption: November 12, 2013.

Submit Written Comments to: Ali Higgs, P.O. Box 41200, Olympia, WA 98504-1200, e-mail ali.higgs@dfi.wa.gov, fax (360) 753-6070, by November 6, 2013.

Assistance for Persons with Disabilities: Contact Angela Nutt by November 1, 2013, TTY (360) 664-8126 or (360) 960-8704.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule making amends chapter 208-544 WAC (and repeals WAC 208-512-045) to (1) provide for semi-annual assessments of nondepositary trust companies, (2) adjust the hourly examination fee schedule and other charges for all of the division of banks' regulated institutions, (3) establish and/or clarify miscellaneous service charges, and (4) make technical changes for purposes of clarity (including plain-language amendments and additions).

Reasons Supporting Proposal: This rule promotes equalization between the different types of chartered entities based

on considerations of asset size, examination hours, and services provided. The rule consolidates all provisions related to semi-annual assessments, hourly examination fees, and other charges for work and services in a single location in chapter 208-544 WAC.

Statutory Authority for Adoption: RCW 43.320.040.

Statute Being Implemented: RCW 30.04.030, 30.04.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting: Ali Higgs, 150 Israel Road, Tumwater, WA 98501, (360) 902-8704; Implementation: Susan Dumontet, 150 Israel Road, Tumwater, WA 98501, (360) 902-8704; and Enforcement: Richard M. Riccobono, 150 Israel Road, Tumwater, WA 98501, (360) 902-8704.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose more than a minor cost on any individual business, including small businesses, as defined under RCW 19.85.020 (2) and (3).

A cost-benefit analysis is not required under RCW 34.05.328. The department of financial institutions is not one of the agencies listed in RCW 34.05.328 (5)(a)(i) as being required to file a cost-benefit analysis.

October 1, 2013
Richard M. Riccobono
Division of Banks Director

NEW SECTION

WAC 208-544-001 Scope. This chapter establishes the rules mandated by RCW 30.04.070 for the collection of authorized fees and charges from regulated institutions. These rules apply unless the director makes a finding that their application in a specific case would be inconsistent with the division's mission to foster sound economic growth and sustainable economic prosperity in the state of Washington or with the principles of collection found in WAC 208-544-005.

NEW SECTION

WAC 208-544-002 Definitions. Unless the context clearly requires otherwise, the definitions used in this section apply throughout this chapter.

(1) "Agricultural lender" has the definition given in RCW 31.35.020(1).

(2) "Alien bank" has the definition given in RCW 30.42.020(1).

(3) "Bank" has the definition given in RCW 30.04.010(2).

(4) "Bank holding company" has the definition given in RCW 30.04.010(3).

(5) "Branch" has the definition given in RCW 30.04.010(5).

(6) "Business development company" has the definition given in RCW 31.24.010(6).

(7) "Commercial bank" is a bank as defined under subsection (3) of this section.

(8) "Department" means the department of financial institutions.

(9) "Development credit corporation" means an entity organized under chapter 31.20 RCW.

(10) "Director" means the director of the division of banks of the department of financial institutions.

(11) "Division" means the division of banks of the department of financial institutions.

(12) "Financial holding company" has the definition given in RCW 30.04.010(8).

(13) "Foreign bank" has the definition given in RCW 30.04.010(9).

(14) "OCC" means the Office of the Comptroller of the Currency, as created under the National Bank Act of 1863.

(15) "OFM" means the office of financial management created by RCW 43.41.050.

(16) "Regulated institution" means an alien bank, agricultural lender, bank, bank holding company, business development company, commercial bank, financial holding company, foreign bank, savings bank, small business administration 7(a) lender, thrift holding company, trust company, or other institution over which the department of financial institutions has regulatory authority over.

(17) "Report of condition" includes the FDIC Call Report, or a regulated institution's quarterly balance sheet and income statement.

(18) "Savings bank" has the definition given in RCW 32.04.020(9), which includes a mutual savings bank and stock savings bank.

(19) "Small business administration 7(a) lender" means an entity licensed under chapter 31.40 RCW.

(20) "Thrift holding company" has the definition given in RCW 32.04.020(10).

(21) "Trust company" has the definition given in RCW 30.04.010(14).

AMENDATORY SECTION (Amending WSR 00-17-141, filed 8/22/00, effective 9/22/00)

WAC 208-544-005 Determination of collection method—Principles. When determining ((~~a revision to~~)) the collection method for authorized fees and charges, the director shall consider, but not be limited to, the following principles((~~.~~)):

(1) The revenue ((~~to be~~)) collected shall be sufficient to allow the division ((~~of banks to achieve its statutory mission~~)) to examine institutions within all required time periods((~~.~~));

(2) Regulatory costs shall be apportioned in a manner consistent with the ((~~state of Washington's overall policy commitments to rural and economically distressed areas, promoting~~)) division's statutory mission to promote and provide the delivery of financial services to ((~~those~~)) rural and economically distressed areas((~~.~~));

(3) No industry or regulated institution shall bear a disproportionate share of regulatory costs((~~.~~));

(4) ((~~There shall be a significant correlation between assessments and examination costs across institutions.~~

~~(5)~~)) The division ((~~of banks~~)) shall have sufficient resources to maintain a competent and motivated staff((~~.~~

~~(6) Such~~)); and

(5) Any other principles ((~~as~~)) the director ((~~may~~)) deems relevant.

AMENDATORY SECTION (Amending WSR 00-17-141, filed 8/22/00, effective 9/22/00)

WAC 208-544-010 Collection of examination costs—Collection method. The ((~~requirement of RCW 30.04.070 and 30.08.095 that the director~~)) division shall collect ((~~from each bank, mutual savings bank, stock savings bank, trust company, or industrial loan company, the costs of the division, shall be met in accordance with the procedures established in this chapter. Costs shall be recouped by~~)) the following ((~~methods~~)):

(1) A semiannual assessment based on asset ((~~charges~~)) size in order to recoup ((~~nondirect bank examination~~)) the indirect costs related ((~~expenses (RCW 30.08.095, giving the director the authority to charge for other services rendered), and~~)) to the examination of regulated institutions as specified in WAC 208-544-020;

(2) An hourly charge for the ((~~estimated actual~~)) direct cost of examinations determined by ((~~a~~)) the rate specified ((~~herein times the number of hours spent by division personnel in regular or extraordinary examinations~~)) in WAC 208-544-030; and

(3) Fees for services as specified in WAC 508-544-040, 208-544-045, and 208-544-050.

AMENDATORY SECTION (Amending WSR 00-17-141, filed 8/22/00, effective 9/22/00)

WAC 208-544-020 Semiannual asset charge—Assessment. ((~~A semiannual charge for assets will be used to recoup nondirect bank examination related expenses (RCW 30.08.095).~~)) (1) The semiannual ((~~charge for assets will~~)) assessment shall be computed ((~~upon~~)) using the asset value reflected in the most recent report of condition. The director may adjust such rates if the director determines that a disproportionate amount of revenue is being collected. The rate of ((~~such~~)) charge ((~~shall be as~~)) is set forth in the following schedules:

(((~~(1)~~))) (a) Commercial banks, ((~~mutual~~)) savings banks, ((~~and stock~~)) savings associations, and alien banks.

((~~The rate of such charge shall be based on the total asset value as reflected in the report of condition due for that period provided, the director may adjust such rates if the director determines that a disproportionate amount of revenue is being collected by such rate. In no event shall the amount of revenue collected from any one bank exceed one hundred thirty-three thousand four hundred ninety dollars per assessment period.~~

~~If the bank's total assets are:~~

~~Over~~	~~But not Over~~	~~This Amount~~	~~Plus~~	~~The assessment is: Of Excess Over~~
~~Million~~	~~Million~~			~~Million~~
~~0~~	~~500~~	~~0~~	~~.00001408~~	~~0~~
~~500~~	~~1000~~	~~7040~~	~~.0000135~~	~~500~~
~~1000~~	~~——~~	~~13,790~~	~~.0000133~~	~~1000~~

~~(2) Alien banks.~~

~~The rate of such charge shall be .000035189 of the total asset value as reflected in the report of condition due for that period provided, the director may adjust such rate if the director determines that a disproportionate amount of revenue is being collected by such rate.~~

~~(3) The director's office shall forward by United States mail a notice to each financial institution showing the manner of calculating the asset charge due and a worksheet for such purposes. The notices shall be mailed each June and December. The asset charge shall be calculated by the financial institution and forwarded to the division of banks with the applicable report. A completed copy of the worksheet shall be included with the assessment. An additional two hundred dollar penalty shall be assessed if the amount is not paid by the time such report of condition or notice of assessment is due.~~))

If the institution's total assets are:		The semiannual assessment is:		
Over this amount (in millions)	But less than this amount (in millions)	This amount	Plus the excess over (in millions)	Multiplied by this rate
$0	$500	----	----	.000017464
$500	$1,000	$8,732	$500	.000016746
$1,000	$10,000	$17,105	$1,000	.000016495
$10,000	----	$165,560	$10,000	.000
The semiannual assessment is capped at $165,560.				

(b) Trust companies.

Total assets under management	Semiannual assessment charge
$0-125 million	$125
$125-250 million	$250
$250-500 million	$500
$500 million - 1 billion	$1,000
$1-2 billion	$2,000
$2-3 billion	$3,000
$3-4 billion	$4,000
$4-5 billion	$5,000
Trust companies pay $1,000 for each additional $1 billion under management. Annual assessments are capped at $100,000.	

(2) Assessments and statements of condition shall be remitted to the division in accordance with the following:

(a) The division shall provide an official notice of assessment to each financial institution in the months of June and December of each calendar year.

(b) The financial institution shall calculate the assessment amount due using the most recent statement of condition.

(c) The assessment payment shall be remitted to the division in accordance within the dates specified by the notice along with the statement of condition used to calculate the assessment.

(d) A fifty dollar fee shall be charged for each day a regulated institution fails to file the assessment payment and statement of condition after the deadline to file has passed, as set out under RCW 30.08.190(3).

AMENDATORY SECTION (Amending WSR 00-17-141, filed 8/22/00, effective 9/22/00)

WAC 208-544-030 Hourly fees and charges—Regular, including extraordinary examination and special examinations. (1) Each ((~~bank, mutual savings bank, trust company, alien bank, or industrial loan company~~)) regulated institution shall pay to the ((~~director the following fees:~~

~~(1) For regular examinations, including extraordinary examinations for the express purpose of examining unusual conditions or circumstances, including extensions of regular examinations wherein conditions may warrant extension of time required in the examination beyond normal allotted time and such other reviews as determined by the director, sixty-five dollars per hour. The director may charge the actual cost of examinations performed under personal service contracts by third parties.~~

~~(2) For electronic data processing examination, trust examination, or other examination requiring specialized expertise, ninety dollars per hour. Electronic data processing centers and trust companies are exempt from the asset assessment provisions of WAC 208-544-020(1) if such centers or companies are not a part of the assets of the bank as reported in the report of condition.~~)) division hourly fees in the amount of eighty-three dollars for regular examinations. This includes safety and soundness, information technology, trust, and any other examination requiring specialized expertise.

(a) The hourly rate applies to extraordinary examinations for the purpose of examining unusual conditions or circumstances, extensions of regular examinations, and any other reviews as determined by the director.

(b) The division may charge the actual cost of examinations performed under personal service contracts by third parties.

(2) The division may collect examination fees for out-of-state banks doing business in the state of Washington (host state) through a cooperative agreement with the home state under RCW 30.04.060.

(a) Fees may be collected directly from the out-of-state institution or may be collected from the home state.

(b) Such fees shall be agreed upon before the examination begins.

(3) The ((~~director~~)) division shall ((~~submit a~~)) provide to the institution an itemized statement ((~~for the foregoing~~)) outlining the charges ((~~following the~~)) upon completion of any applicable examination((~~, and~~)). The charges contained in the statement shall be paid ((~~not~~)) no later than thirty days after ((~~submission~~)) the billing date of such statement.

(4) ((~~These charges shall become effective for invoicing that occurs after the effective date of this rule, provided such invoicing relates to examinations occurring on or after July 1, 1991.~~)) The division may require a lump sum payment in advance to cover the anticipated cost of review and investigation of the activities described in this section. In no event shall the lump sum payment required under this section exceed the actual cost incurred under those subsections.

NEW SECTION

WAC 208-544-040 Certificate and secretary of state filing fees. (1) The division shall collect one hundred dollars for issuing each of the following:

(a) Branch certificates;

(b) Certificates of increase or decrease of capital stock;

(c) Certificates of authority;

(d) Certificates of corporate existence; and

(e) Any other certificates issued by the division.

(2) The division shall collect the following for filing documents with the secretary of state:

(a) One hundred dollars for filing articles of incorporation, amendments thereof, or any other documents filed with the secretary of state.

(b) Any amounts billed directly to the division by the secretary of state relating to subsection (2)(a) of this section.

NEW SECTION

WAC 208-544-045 Additional services fees. (1) The division shall collect hourly fees in the amount of eighty-three dollars plus actual expenses for all services attendant to:

(a) The chartering of a new regulated institution;

(b) The conversion of an existing nonstate chartered institution to a Washington state chartered institution;

(c) The establishment of an office or bureau by an alien bank in Washington state;

(d) The acquisition and control of more than five percent of the shares of voting stock or substantially all of the assets of a bank, trust company, national banking association, or bank holding company, where the principal operations are conducted within this state by an out-of-state bank holding company;

(e) The issuance or filing of a notice of change of control;

(f) Requests for division approval to use words indicating bank or trust company in a company name under RCW 30.04.020;

(g) Meeting attendance by division personnel with the board of directors or senior management of a regulated institution;

(h) Off-site monitoring of a regulated institution;

(i) Voluntary or involuntary liquidation under chapter 30.44 RCW;

(j) Acting as conservator of a bank or trust company under chapter 30.46 RCW;

(k) Investigation into, and the resolution of, consumer complaints;

(l) Any inquiry made to the division by a person, company, or regulated institution that is not in the normal course of business;

(m) Investigation into, and subsequent enforcement action(s) against, individuals, companies, or otherwise, that are operating an unlicensed bank or trust business in the state of Washington;

(n) Applications submitted to the division by an existing regulated institution to:

(i) Merge, consolidate, reorganize, or convert to another charter type;

(ii) Establish a new branch;

(iii) Relocate the main office or an existing branch;

(iv) Purchase or sell an existing branch;

(v) Confer trust powers on an existing state-chartered bank;

(vi) Change the legal name of the regulated institution.

(o) Any other activity the director deems relevant or necessary.

(2) The division shall collect per page for furnishing copies of papers filed with the division in accordance with the fees set out in WAC 208-12-090.

NEW SECTION

WAC 208-544-055 Legal fees. The division may collect the following legal fees:

(1) Hourly fees in the amount of eighty-three dollars for legal opinions rendered interpreting statutes and rules;

(2) Pass-through costs for legal assistance rendered by an assistant attorney general or special counsel related to a specific regulated institution.

(a) The division shall notify a regulated institution before the division incurs expense for legal assistance that may be charged to the regulated institution under this section.

(b) The charges shall be paid no later than thirty days after the billing date of the rendered legal assistance.

(c) This section shall not govern the claim of attorney's fees in a judicial proceeding between the division and a regulated institution. Legal fees relating to such actions are governed by the Washington Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 00-17-141, filed 8/22/00, effective 9/22/00)

WAC 208-544-060 Banking fund—Minimum cash balance. (1) The director ((~~shall maintain~~)) may make a finding that a minimum cash balance ((~~in the banking fund (RCW 43.19.095)~~)) of at least one month's allotment be maintained in the banking fund as set out in RCW 43.320.110. One month's allotment is ((~~based upon~~)) the current biennium budget divided by twenty-four months.

(2) In the event the banking fund balance drops below ((~~this figure~~)) the required amount, the director ((~~shall~~)) may declare the next semiannual asset assessment due((~~; payment within thirty days of such declaration~~)). The ((~~director~~)) department shall bill each institution based on the most current report of condition ((~~and~~)). Payment is due within thirty days of such declaration and shall be in lieu of the next regularly scheduled asset assessment.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-544-025	Fees paid by interstate banks.
WAC 208-544-039	Charges and fees effective October 6, 2008.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-512-045	Schedule of fees for banks, trust companies, stock savings banks, mutual savings banks, and alien banks.

WSR 13-20-129
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 12-04—Filed October 2, 2013, 9:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-029.

Title of Rule and Other Identifying Information: Updates to chapter 173-433 WAC, Solid fuel burning devices.

Hearing Location(s): Department of Ecology, Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503, on November 7, 2013, at 7 p.m. Presentation, question and answer session followed by the formal public hearing on the rule proposal. The SIP hearing will follow.

During the first hearing, ecology will explain the updated rule, answer questions, and then invite comments on the proposed rule. Immediately after the close of the rule proposal hearing, a second hearing will begin. At this hearing, ecology invites comments on the proposal to submit the revised rule (except subsection 130, 170, and 200) to EPA for inclusion in the SIP. The rule revisions are intended to meet the requirements of Section 110 (a)(2), Parts A, C and D, of the federal Clean Air Act.

Information about webinar participation in public hearing on November 7, 2013, at 7 p.m.

Webinar: Ecology is also offering this presentation, question and answer session and formal public hearing via webinar. Webinars are an online meeting forum that you can attend from any computer using internet access. For more information and instructions, go to www.ecy.wa.gov/programs/air/rules/webinars.htm.

To register for the webinar, click on the following link for more information and instructions www.ecy.wa.gov/programs/air/rules/webinars.htm.

Comments: Ecology will accept formal comments at the ecology location and phone 1-877-668-4493/access code 922 294 309. For more information and instructions, go to www.ecy.wa.gov/programs/air/rules/webinars.htm.

Date of Intended Adoption: January 9, 2014.

Submit Written Comments to: Richelle Perez, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail AQComments@ECY.WA.GOV, fax (360) 407-7534, by November 15, 2013.

Assistance for Persons with Disabilities: Contact Richelle Perez at (360) 407-7528, by November 1, 2013. If you have hearing loss, call TTY (771) or for Washington relay service if you have speech disability call (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Solid fuel burning devices (chapter 173-433 WAC) helps to reduce Washington's wood smoke emissions to help meet federal air quality standards. The focus of this rule making is to:

- Modify trigger levels for calling burn bans in areas at risk for nonattainment as outlined in statute.
- Align the rule with other statutory changes.
- Meet Environmental Protection Agency (EPA) requirements.
- Help Washington's efforts to improve air quality in areas affected by pollution from wood stoves.
- Include housekeeping-type changes to the rule identified during rule making.

Reasons Supporting Proposal: Ecology must update chapter 173-433 WAC to align this chapter with changes in state laws. Ecology is updating the rule now because EPA requires us to update this rule to be consistent with state law before they will approve Washington's maintenance plan and redesignation request for the Tacoma-Pierce County nonattainment area. The maintenance plan and redesignation request are related to a large portion of Pierce County. EPA designated this area nonattainment in 2009 because it did not meet the federal standard for fine particle pollution (also known as $PM_{2.5}$). If EPA cannot approve a redesignation request for the Tacoma-Pierce County nonattainment area, then additional stricter federal requirements, including economic constraints, will be imposed on the area.

Statutory Authority for Adoption: Chapter 70.94 RCW provides sufficient authority to adopt rule changes.

Statute Being Implemented: Chapter 70.94 RCW.

Rule is necessary because of federal law, Federal Clean Air Act.

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Richelle Perez, Department of Ecology, Lacey, Washington, (360) 407-7528; Implementation: Julie Oliver, Department of Ecology, Lacey, Washington, (360) 407-6823; and Enforcement: Stu Clark, Department of Ecology, Lacey, Washington, (360) 407-6880.

No small business economic impact statement has been prepared under chapter 19.85 RCW. An agency must prepare a small business economic impact statement (SBEIS) if a proposed rule will impose more than minor costs on businesses in an industry, RCW 19.85.030 (1)(a). An SBEIS is not required in this case because the rule does not impose additional costs on businesses in an industry. The proposed amendments do not impose additional costs of any kind. The proposed amendments are either "housekeeping" amendments or are mandated by federal or existing state statute. See RCW 19.85.025(3) and 34.05.310 (4)(c) and (d).

A cost-benefit analysis is not required under RCW 34.05.328. This rule making is exempt from requirements under RCW 34.05.328 to develop a cost benefit and least burdensome alternative analysis because the proposed amendments are either "housekeeping" amendments (exempt under RCW 34.05.310 (4)(d)) or are incorporating existing Washington state statutes without material change (exempt under RCW 34.05.310 (4)(c)). Rules that only correct typographical errors, make address or name changes, clarify language of a rule without changing its effect, or rules the content of which is explicitly and specifically dictated by statute, are exempt from the requirements under RCW 34.05.328.

October 2, 2013
Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 88-01-056, filed 12/16/87)

WAC 173-433-010 Purpose. This chapter, promulgated under chapters 43.21A and 70.94 RCW, establishes the following for solid fuel burning devices:

• Emission standards((,));

• Certification standards and procedures((, ~~curtailment rules, and~~));

• Fuel restrictions ((~~for solid fuel burning devices~~));

• Operation restrictions during impaired air quality burn bans; and

• Criteria for prohibiting the use of solid fuel burning devices that are not certified.

AMENDATORY SECTION (Amending WSR 91-07-066, filed 3/20/91, effective 4/20/91)

WAC 173-433-030 Definitions. The definitions of terms contained in chapter 173-400 WAC are incorporated by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter((, ~~shall~~)) have the following meanings:

(1) "Adequate source of heat" means the ability to maintain seventy degrees Fahrenheit at a point three feet above the floor in all normally inhabited areas of a dwelling.

(2) "Area at risk for nonattainment" means an area where the three-year average of the annual ninety-eighth percentile of twenty-four hour PM-2.5 levels is greater than twenty-nine micrograms per cubic meter based on monitoring data for 2008-2010. Ecology processed all statewide data according to methods defined in 40 C.F.R. Part 50 Appendix N and determined that the following areas are areas at risk for nonattainment:

• Darrington;

• Marysville;

• Tacoma-Pierce County Nonattainment Area as described in 40 C.F.R. 81.348;

• Yakima.

(3) "Certified" means that a woodstove meets emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified

by the EPA in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990.

(((~~(3)~~))) (4) "Coal-only heater" means an enclosed, coal burning appliance capable of and intended for residential space heating, domestic water heating, or indoor cooking, which has all of the following characteristics:

(a) An opening for emptying ash which is located near the bottom or the side of the appliance;

(b) A system which admits air primarily up and through the fuel bed;

(c) A grate or other similar device for shaking or disturbing the fuel bed or power driven mechanical stoker; and

(d) The model is listed by a nationally recognized safety testing laboratory for use of coal only, except for coal ignition purposes.

(((~~(4)~~))) (5) "EPA" means United States Environmental Protection Agency.

(((~~(5) "New woodstove" means a woodstove that has not been sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer, and has not been so used as to become what is commonly known as "second hand" within the ordinary meaning of that term.~~)))

(6) "Impaired air quality burn ban" means a condition where both of the following exist:

• Air quality has degraded or will soon degrade as described in WAC 173-433-140;

• Ecology or the local air authority restricts solid fuel burning device emissions to prevent air quality from worsening, or limit the time with poor air quality.

Ecology or the local air authority declares impaired air quality burn bans according to the criteria in WAC 173-433-140.

(7) "Jurisdictional health department" means a city, county, city-county, or district public health department.

(8) "Local air authority" means an air pollution control authority activated under chapter 70.94 RCW that has jurisdiction over the subject source.

(9) "Nonaffected pellet stove" means that a pellet stove has an air-to-fuel ratio equal to or greater than 35.0 when tested by an accredited laboratory in accordance with methods and procedures specified by the EPA in "40 C.F.R. 60 Appendix A, REFERENCE METHOD 28A - MEASUREMENT OF AIR TO FUEL RATIO AND MINIMUM ACHIEVABLE BURN RATES FOR WOOD-FIRED APPLIANCES" as amended through July 1, 1990.

(((~~(7)~~))) (10) "Prohibit the use" or "prohibition" may include requiring disclosure of an uncertified device, removal of an uncertified device, or rendering an uncertified device inoperable. Except as provided in RCW 64.06.020, such prohibition may not include time of sale obligation on the seller or buyer of real estate as part of a real estate transaction.

(11) "Retailer" means any person engaged in the sale of solid fuel burning devices directly to the public. A contractor who sells dwellings with solid fuel burning devices installed or a mail order outlet which sells solid fuel burning devices directly to the public is considered to be a solid fuel burning device retailer.

(((~~(8)~~))) (12) "Seasoned wood" means wood of any species that has been sufficiently dried so as to contain twenty percent or less moisture by weight.

(((~~(9)~~))) (13) "Solid fuel burning device" (same as solid fuel heating device) means a device that burns wood, coal, or any other nongaseous or nonliquid fuels, and includes any device burning any solid fuel except those prohibited by WAC 173-433-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour.

(((~~(10)~~))) (14) "Treated wood" means wood of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration.

(((~~(11)~~))) (15) "Woodstove" (same as "wood heater") means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

(a) An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

(b) A useable firebox volume of less than twenty cubic feet;

(c) A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28;

(d) A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

Any combination of parts, typically consisting of but not limited to: Doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

AMENDATORY SECTION (Amending WSR 93-04-105, filed 2/3/93, effective 3/6/93)

WAC 173-433-100 Emission performance standards. (1) **Woodstoves.** ((~~On or before January 1, 1995, a person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a new woodstove in Washington unless it has been tested to determine its emission performance and heating efficiency and certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990. After January 1, 1995,~~)) Woodstove sales ((~~shall~~)) must comply with the requirements of subsection (3) of this section, Solid fuel burning devices.

(2) **Fireplaces.** ((~~After January 1, 1997,~~)) A person ((~~shall~~)) must not advertise to sell, offer to sell, sell, bargain, exchange, or give away a factory built fireplace unless it meets the 1990 ((~~United States Environmental Protection Agency~~)) EPA standards for woodstoves or equivalent standard that may be established by the state building code council by rule. Subsection (3) of this section ((~~shall~~)) does not apply to fireplaces, including factory built fireplaces, and masonry fireplaces.

(3) **Solid fuel burning devices.** ((~~After January 1, 1995,~~)) A person ((~~shall~~)) must not advertise to sell, offer to

sell, sell, bargain, exchange, or give away a solid fuel burning device in Washington unless it has been certified and labeled in accordance with procedures and criteria specified in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990, and meets the following particulate air contaminant emission standards and the test methodology of the ((~~United States Environmental Protection Agency~~)) EPA in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the ((~~United States Environmental Protection Agency~~)) EPA subsequent to such date:

(a) Two and one-half grams per hour for catalytic woodstoves; and

(b) Four and one-half grams per hour for all other solid fuel burning devices.

(c) For purposes of this subsection, "equivalent" ((~~shall~~)) means the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by ecology that relates the emission test results from the methodology established by the ((~~United States Environmental Protection Agency~~)) EPA prior to May 15, 1991, to the test results from the methodology subsequently adopted by that agency.

AMENDATORY SECTION (Amending WSR 93-04-105, filed 2/3/93, effective 3/6/93)

WAC 173-433-110 Opacity standards. (1) **Statewide opacity standard.**

(a) A person ((~~shall~~)) must not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period.

(((~~(2) Statewide opacity standard. An~~)) (b) A local air authority ((~~shall~~)) must not adopt or enforce an opacity level for solid fuel burning devices that is more stringent than the statewide standard.

(((~~(3)~~))) (2) **Test method and procedures.** Methods and procedures specified by the EPA in "40 C.F.R. 60 Appendix A reference method 9 - VISUAL DETERMINATION OF THE OPACITY OF EMISSIONS FROM STATIONARY SOURCES" as amended through July 1, 1990, ((~~shall~~)) must be used to determine compliance with subsection (1) of this section.

(((~~(4)~~))) (3) **Enforcement.** Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard ((~~shall~~)) constitutes prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device. The provisions of this requirement shall:

(a) Be enforceable on a complaint basis.

(b) Not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

(((~~(5)~~))) (4) **Education.** Any person or retailer providing information on the operation of solid fuel burning devices, such as brochures, demonstrations, and public education programs, should include information that opacity levels of ten percent or less are attainable through proper operation.

AMENDATORY SECTION (Amending WSR 91-07-066, filed 3/20/91, effective 4/20/91)

WAC 173-433-120 Prohibited fuel types. A person ((~~shall~~)) must not cause or allow any of the following materials to be burned in a solid fuel burning device:

(1) Garbage;
(2) Treated wood;
(3) Plastic and plastic products;
(4) Rubber products;
(5) Animal carcasses;
(6) Asphaltic products;
(7) Waste petroleum products;
(8) Paints and chemicals; or
(9) Any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire, properly seasoned fuel wood, or coal with sulfur content less than 1.0% by weight burned in a coal-only heater.

AMENDATORY SECTION (Amending WSR 91-07-066, filed 3/20/91, effective 4/20/91)

WAC 173-433-140 ((~~Impaired air quality~~)) Criteria for impaired air quality burn bans. ((~~Impaired air quality shall be determined by ecology or an authority in accordance with the following criteria:~~

~~(1) "First stage impaired air quality" - the first stage indicates the presence of:~~

~~(a) Particulate matter ten microns and smaller in diameter (PM_{10}) at or above an ambient level of seventy-five micrograms per cubic meter; or~~

~~(b) Carbon monoxide at or above an ambient level of eight parts of contaminant per million parts of air by volume (ppm).~~

~~(2) "Second stage impaired air quality" - the second stage indicates the presence of particulate matter ten microns and smaller in diameter (PM_{10}) at or above an ambient level of one hundred five micrograms per cubic meter.~~

~~(3) On or after July 1, 1995, if an authority has geographically limited the use of solid fuel burning devices as specified under WAC 173-433-150(6), a single stage of impaired air quality will apply within the geographical area defined by the authority. A single stage of impaired air quality indicates the presence of:~~

~~(a) Particulate matter ten microns and smaller in diameter (PM_{10}) at or above an ambient level of ninety micrograms per cubic meter; or~~

~~(b) Carbon monoxide at or above an ambient level of eight parts of contaminant ppm.~~

~~(4) Acceptable ambient air quality measurement methods.~~

~~(a) Particulate matter ten microns and smaller in diameter (PM_{10}).~~

~~(i) Procedures specified by the EPA in "40 C.F.R. 50, APPENDIX J - REFERENCE METHOD FOR THE DETERMINATION OF PARTICULATE MATTER AS PM_{10} IN THE ATMOSPHERE" as amended through July 1, 1990, shall be used to gather reference ambient PM_{10} data on a twenty-four-hour average.~~

~~(ii) More timely ambient PM_{10} measurement methods may be utilized to evaluate air quality impairment if accepted~~

~~and approved by ecology. Any alternative method for evaluating air quality impairment for the purpose of curtailing solid fuel burning device use must be done at the same location and in parallel to the reference method, and must be related to the reference method by a mathematical relationship with a correlation coefficient of no less than 0.85.~~

~~(b) Carbon monoxide (CO) must be measured on an eight-hour average in accordance with procedures specified by the EPA in "40 C.F.R. 50, APPENDIX C - REFERENCE METHOD FOR THE DETERMINATION OF CARBON MONOXIDE IN THE ATMOSPHERE (NON-DISPURSIVE INFRARED PHOTOMETRY)" as amended through July 1, 1990.~~

~~(c) All monitors used to measure PM_{10} for evaluation of air quality impairment due to solid fuel burning device use must be sited in accordance with EPA siting criteria in or near affected residential areas.~~)) Ecology or a local air authority may call an impaired air quality burn ban as follows:

(1) **Stage 1 impaired air quality burn ban:**

(a) Ecology or the local air authority may call a stage 1 impaired air quality burn ban when they predict that the twenty-four hour average of PM-2.5 levels will reach or exceed thirty-five micrograms per cubic meter within forty-eight hours.

(b) Pierce, Snohomish, and Yakima counties each contain at least one area at risk for nonattainment. In these counties, the local air authority may call a stage 1 impaired air quality burn ban when they predict that the twenty-four hour average of PM-2.5 levels will reach or exceed thirty micrograms per cubic meter within seventy-two hours.

(2) **Stage 2 impaired air quality burn ban:**

(a) Ecology or the local air authority may call a stage 2 impaired air quality burn ban when all of the following conditions exist:

(i) A stage 1 impaired air quality burn ban is already in effect and has not reduced the trend of rising PM-2.5 levels adequately.

(ii) The twenty-four hour average of PM-2.5 levels have already reached or exceeded twenty-five micrograms per cubic meter.

(iii) Ecology or the local air authority expects that PM-2.5 levels will remain above twenty-five micrograms per cubic meter for twenty-four hours or more from the time PM-2.5 levels reached the trigger in (a)(ii) of this subsection.

(b) Ecology or the local air authority may call a stage 2 impaired air quality burn ban without calling a stage 1 impaired air quality burn ban when all of the following conditions exist:

(i) The twenty-four hour average of PM-2.5 levels have reached or exceeded twenty-five micrograms per cubic meter.

(ii) PM-2.5 levels have risen rapidly.

(iii) Ecology or the local air authority predicts that the twenty-four hour average of PM-2.5 levels will exceed thirty-five micrograms per cubic meter within twenty-four hours.

(iv) Weather conditions alone are highly unlikely to help decrease PM-2.5 levels sufficiently.

(c) Pierce, Snohomish, and Yakima counties each contain at least one area at risk for nonattainment. In these counties, the local air authority may call a stage 2 impaired air quality burn ban without calling a stage 1 impaired air quality burn ban when all of the following conditions exist:

(i) The twenty-four hour average of PM-2.5 levels have reached or exceeded twenty-five micrograms per cubic meter.

(ii) PM-2.5 levels have risen rapidly.

(iii) The local air authority predicts that the twenty-four hour average of PM-2.5 levels will reach or exceed thirty micrograms per cubic meter within twenty-four hours.

(iv) Weather conditions alone are highly unlikely to help decrease PM-2.5 levels sufficiently.

(3) Ecology or the local air authority may call an impaired air quality burn ban for areas smaller than a county, when and where feasible.

AMENDATORY SECTION (Amending WSR 91-07-066, filed 3/20/91, effective 4/20/91)

WAC 173-433-150 ((~~Curtailment.~~)) Restrictions on operation of solid fuel burning devices. (1) ((~~Whenever ecology or an authority has declared the first stage of impaired air quality for a geographical area a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device shall~~)) **Stage 1 impaired air quality burn ban:**

(a) Except as described in (b) of this subsection, a person must not operate any solid fuel burning device((~~,~~)) during a stage 1 impaired air quality burn ban when all of the following apply:

• The solid fuel burning device is located in a residence or commercial establishment within the geographical area covered by the stage 1 impaired air quality burn ban.

• The residence or commercial establishment has an adequate source of heat other than a solid fuel burning device.

(b) A person meeting all of the conditions in (a) of this subsection must not operate any solid fuel burning device during a stage 1 impaired air quality burn ban unless the solid fuel burning device is one of the following:

(((~~(a)~~))) (i) A nonaffected pellet stove; or

(((~~(b)~~))) (ii) A woodstove certified and labeled by the EPA under "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

(((~~(c)~~))) (iii) A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

(c) Except as allowed by (b) of this subsection, a person already operating a solid fuel burning device when a stage 1 impaired air quality burn ban begins must withhold new solid fuel for the duration of the impaired air quality burn ban.

(2) ((~~Whenever ecology or an authority has declared the second stage of impaired air quality for a geographical area a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device shall~~)) **Stage 2 impaired air quality burn ban:**

(a) A person must not operate any solid fuel burning device during a stage 2 impaired air quality burn ban when all of the following apply:

• The solid fuel burning device is located in a residence or commercial establishment within the geographical area covered by the stage 2 impaired air quality burn ban.

• The residence or commercial establishment has an adequate source of heat other than a solid fuel burning device.

(b) A person already operating a solid fuel burning device when a stage 2 impaired air quality burn ban begins must withhold any new solid fuel for the duration of the stage 2 impaired air quality burn ban.

(3) ((~~Whenever ecology has declared an air pollution episode at a level above forecast a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device shall~~)) **Air pollution episodes.** Ecology may declare air pollution episodes as defined in chapter 173-435 WAC.

(a) A person must not operate any solid fuel burning device during alert, warning, or emergency air pollution episodes when all of the following apply:

• The solid fuel burning device is located in a residence or commercial establishment within the geographical area covered by the air pollution episode.

• The residence or commercial establishment has an adequate source of heat other than a solid fuel burning device.

(b) A person already operating a solid fuel burning device when an alert, warning, or emergency air pollution episode begins must withhold new solid fuel for the duration of the alert, warning, or emergency air pollution episode.

(4) The following matrix graphically illustrates the applicability of different types of solid fuel burning devices to the provisions of subsections (1) through (3) of this section:

((~~Burn Condition~~)) Type of Device	Impaired Air Quality Burn Ban		Episode			
	First Stage	Second Stage	Forecast	Alert((~~, Warning, or Emergency~~))	Warning	Emergency
Pellet Stove (nonaffected)	OK	NO	OK	NO	NO	NO
EPA Certified Woodstove	OK	NO	OK	NO	NO	NO
DEQ Phase 2 Woodstove	OK	NO	OK	NO	NO	NO
EPA Exempted Device	NO	NO	OK	NO	NO	NO
All Other Devices	NO	NO	OK	NO	NO	NO

NOTES: "OK" indicates that a person may operate the device ((~~may be operated~~))
"NO" indicates that a person must withhold new fuel from the device ((~~may not be operated~~))

(5) ((~~On or after July 1, 1995, an authority may prohibit use of solid fuel burning devices within specific geographical areas:~~

~~(a) The following factors shall be considered in the exercise of this limitation:~~

~~(i) The contribution of solid fuel devices that do not meet the standards set forth in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990, to nonattainment of national ambient air quality standards;~~

~~(ii) The population density of the applicable geographical area; and~~

~~(iii) The public health effects of the use of solid fuel devices which do not meet the standards set forth in "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990.~~

~~(b) The following solid fuel devices are exempted from this limitation:~~

~~(i) Fireplaces;~~

~~(ii) Woodstoves certified and labeled by the EPA under "40 C.F.R. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or~~

~~(iii) Nonaffected pellet stoves.~~

~~(c) An authority shall allow an exemption from this subsection for low-income persons who reside in the geographical area affected by this subsection.~~

~~(6) On or after July 1, 1995, whenever an authority has declared impaired air quality in accordance with criteria contained in WAC 173-433-140(3) for a geographical area defined under subsection (5) of this section, a person in a residence or commercial establishment within that geographical area shall not operate any solid fuel burning device.~~

~~(7) A person responsible for an applicable solid fuel burning device already in operation at the time an episode is declared shall withhold new solid fuel for the duration of the episode. A person responsible for an applicable solid fuel burning device already in operation at the time impaired air quality is declared shall withhold new solid fuel for the duration of the impaired air quality.~~)) Smoke visible from a chimney, flue or exhaust duct after three hours has elapsed from the declaration of the episode or impaired air quality ((~~shall~~)) burn ban constitutes prima facie evidence of unlawful operation of an applicable solid fuel burning device. A person may refute this presumption ((~~may be refuted by~~)) with a demonstration that the smoke was not caused by a solid fuel burning device.

(((~~(8)~~))) (6) Ecology, local air authorities, health departments, fire departments, or local police forces having jurisdiction in the area may enforce compliance with the ((~~above solid fuel burning device curtailment rules~~)) air pollution episode or impaired air quality burn ban after three hours has

elapsed from the declaration of the air pollution episode or impaired air quality burn ban.

NEW SECTION

WAC 173-433-155 Criteria for prohibiting solid fuel burning devices that are not certified. (1) After January 1, 2015, and after meeting the requirements in subsection (3) of this section, ecology or the local air authority may prohibit the use of solid fuel burning devices in a nonattainment area or an area with an approved PM-2.5 maintenance plan.

(2) Except as provided in subsection (3) of this section, the prohibition will prohibit the use of solid fuel burning devices that are not certified, even in the absence of an air quality episode or impaired air quality burn ban.

(3) Before prohibiting the use of solid fuel burning devices as allowed in subsections (1) and (2) of this section, ecology or a local air authority must:

(a) Allow exemptions from this subsection as described in RCW 70.94.477(2) and 70.94.477(6).

(b) Seek input from any city, county, or jurisdictional health department affected by the proposal to prohibit the use of solid fuel burning devices.

(c) Make the following written findings:

(i) The EPA has designated the area nonattainment for PM-2.5 or has approved a PM-2.5 maintenance plan for the area.

(ii) Emissions from solid fuel burning devices in the area are a major contributing factor for violating the national ambient air quality standard for PM-2.5.

(iii) The area has an adequately funded program to assist low-income households to secure an adequate source of heat.

(4) When both of the following are true:

• The area is in ecology's jurisdiction.

• The legislative authority of a city or county for the area formally expresses concerns with the written findings required in subsection (3)(c) of this section.

Ecology will publish all of the following on the agency web site:

(a) The reasons for prohibiting the use of solid fuel burning devices.

(b) The agency's responses to the concerns expressed by the city or county legislative authority.

(5) The responsibility for enforcement of the prohibition of the use of solid fuel burning devices resides solely with ecology or the local air authority.

(6) A city, county, or jurisdictional health department serving the area may agree to assist with enforcement activities.

(7) On or after June 7, 2012, and before January 1, 2015, ecology or the local air authority must provide assistance to households using solid fuel burning devices to reduce the emissions from those devices or change out to a lower emission device.

(8) Before the effective date of any prohibition, ecology or the local air authority must provide public education in the area regarding all of the following:

(a) How households can reduce their emissions through cleaner burning practices.

(b) The importance of respecting impaired air quality burn bans.

(c) Opportunities for assistance in obtaining a cleaner device.

(9) In an area where the EPA has approved a PM-10 maintenance plan, ecology or the local air authority may prohibit the use of solid fuel burning devices when all of the following are true:

(a) The PM-10 maintenance plan contained a prohibition on the use of solid fuel burning devices as a contingency measure.

(b) The area has violated the PM-10 national ambient air quality standard.

(c) The emissions from solid fuel burning devices are a major contributing factor to the violation of the PM-10 national ambient air quality standard.

WSR 13-20-130
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 2, 2013, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-007.

Title of Rule and Other Identifying Information: WAC 458-20-273 Renewable energy system cost recovery, this rule explains the cost-recovery incentive program for renewable energy systems.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on November 12, 2013, at 10:00 a.m. Call-in option can be provided upon request. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: December 13, 2013.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by November 12, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499 or Renee Cosare, (360) 725-7514 no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to incorporate the policy positions taken by the department of revenue in issued letter rulings and notices and incorporate public comments from the public meeting. Significant changes include:

- Dividing the rule into eight parts based on subject matter categories to make it easier to read;
- Clarifying the appeal procedures;
- Clarifying whether a participant in a nonutility community solar project has to be a customer of the utility serving the area where the community system is located;

- Clarifying state taxation issues relating to this incentive program;
- Clarifying whether a system may be leased; and
- Clarifying the acceptable use of financing to purchase of the system, including third-party financing and third-party system ownership.

Reasons Supporting Proposal: SB 5526 (chapter 179, Laws of 2011) amended RCW 82.16.110 through 82.16.120 adding solar stirling converters manufactured in Washington to the list of qualified renewable energy devices or components and the changes above were included to update the rule as described.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060.

Statute Being Implemented: RCW 82.16.110, 82.16.120, and 82.16.130.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

October 2, 2013
Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 10-17-004, filed 8/5/10, effective 9/5/10)

WAC 458-20-273 Renewable energy system cost recovery. (1) **Introduction.** This ((~~section~~)) rule explains the renewable energy system cost recovery program provided in RCW 82.16.110 through ((~~82.16.140~~)) 82-16-130. This program authorizes ((~~a customer investment cost recovery~~)) an incentive payment (((~~incentive payment~~))) based on production to ((~~help~~)) offset the costs associated with the purchase ((~~and use~~)) of renewable energy systems located in Washington state that ((~~produce~~)) generate electricity. Qualified renewable energy systems include:

- Solar energy systems;
- Wind generators; and
- Certain types of anaerobic digesters that process manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(((~~(a) Any individual, business, local government, or participant in a qualifying community solar project that purchases and uses or supports such a system may apply for an incentive payment from the light and power business that serves the property. Neither a state governmental entity nor a federal governmental entity can participate in the incentive payment program.~~

~~(b) Participation by a light and power business in this incentive payment program is discretionary.~~

~~(c) No incentive payment may be made for kilowatt-hours generated before July 1, 2005, or after June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.~~

~~(2) **Definitions.**~~)) (2) This rule is divided into eight different parts based on subject matter category. The eight parts to this rule are as follow:

- Part I – Definitions;
- Part II – Participation requirements;
- Part III – Application requirements;
- Part IV – General provisions;
- Part V - Computation of the amount of the incentive payment;
- Part VI – Manufactured in Washington state;
- Part VII – Tax issues;
- Part VIII – Appeal rights.

PART I - DEFINITIONS

The definitions in this ((~~section~~)) part apply throughout this ((~~section~~)) rule unless the context clearly requires otherwise.

(((~~(a)~~))) (101) **"Administrator"** means an owner and assignee of a community solar project defined in (((~~(c)(i) and (iii)~~))) (103)(a) and (c) of this ((~~subsection~~)) part, that is responsible for applying for the ((~~investment~~)) cost recovery incentive on behalf of the ((~~other~~)) system's owners and performing such administrative tasks on behalf of the ((~~other~~)) owners as may be necessary; such as receiving ((~~investment~~)) the cost recovery incentive payments, and allocating and paying appropriate amounts of such payments to ((~~other~~)) the owners.

(((~~(b)~~))) (102) **"Applicant"** has the following three meanings in this definition.

(((~~(i)~~))) (a) For other than community solar projects, applicant means an individual, business, or local government((~~,~~)) that owns the renewable energy system that qualifies under the definition of "customer-generated electricity."

(((~~(ii)~~))) (b) For purposes of a community solar project defined in (((~~(c)(i) or (iii)~~))) (103)(a) or (c) of this ((~~subsection~~)) part, the administrator, defined in (((~~(a)~~))) (101) of this ((~~subsection~~)) part, is the applicant.

(((~~(iii)~~))) (c) For purposes of a utility-owned community solar project defined in (((~~(c)(ii)~~))) (103)(b) of this ((~~subsection~~)) part, the utility will act as the applicant for its ratepayers that provide financial support to participate in the project.

(((~~(c)~~))) (103) **"Community solar project"** means any one of the three definitions, below:

(((~~(i)~~))) (a) A solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and is owned by local individuals, households, nonprofit organizations, or nonutility businesses that is placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business.

(((~~(ii)~~))) (b) A utility-owned solar energy system located in Washington state that is capable of generating up to seventy-five kilowatts of electricity and that is voluntarily funded by the utility's ratepayers where, in exchange for their financial support, the utility gives contributors a payment or credit on their utility bill for their share of the value of the electricity generated by the solar energy system.

(((~~(iii)~~))) (c) A solar energy system located in Washington state, placed on the property owned in fee simple by a cooperating local governmental entity that is not in the light and power business or in the gas distribution business, that is capable of generating up to seventy-five kilowatts of electricity, and that is owned by a company whose members are each eligible for ((~~an investment~~)) a cost recovery incentive payment for the same customer-generated electricity as defined in (((~~(e)~~))) (105) of this ((~~subsection~~)) part.

(((~~(A)~~))) (i) The cooperating local governmental entity that owns the property on which the solar energy system is located may also be a member of the company.

(((~~(B)~~))) (ii) A member may hold an interest in the company constituting ownership of either a portion of the solar energy system or a portion of the value of the electricity generated by the solar energy system, or both.

(((~~(d)~~))) (104) For purposes of **"community solar project"** as defined in (((~~(e)~~))) (103) of this ((~~subsection~~)) part, the following definitions apply.

(((~~(i)~~))) (a) **"Capable of generating up to seventy-five kilowatts of electricity"** means that the solar energy system will qualify if it generates seventy-five kilowatts of electricity or less. If the solar energy system or a community solar project produces more than seventy-five kilowatts the entire project is ineligible for the incentive payment program.

(((~~(ii)~~))) (b) **"Company"** means an entity that is:

(((~~(A)(I)~~))) (i)(A) A limited liability company created under the laws of Washington state;

(((~~(II)~~))) (B) A cooperative formed under chapter 23.86 RCW; or

(((~~(III)~~))) (C) A mutual corporation or association formed under chapter 24.06 RCW; and

(((~~(B)~~))) (ii) Not a "utility" as defined in (((~~(d)(v)~~))) (g) of this ((~~subsection~~)) part.

(iii) A limited partnership, trust, or other entity not listed in (b)(i)(A) through (C) of this part does not qualify as a "company."

(c) **"Local individuals, households, nonprofit organizations, or nonutility businesses"** mean two or more individuals, households, nonprofit organizations, or nonutility businesses that ((~~are:~~

~~• Located~~)) reside on a property or have a business located on a property within the service area of the light and power business where the renewable energy system is located((~~; and~~

~~• Residents of Washington state~~)).

(((~~(iv)~~))) (d) **"Nonprofit organization"** means an organization exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the federal Internal Revenue Code of 1986, as amended, as of January 1, 2009.

(((~~(v)~~))) (e) **"Owned in fee simple"** means ((~~an interest in land that is~~)) the broadest property interest allowed by law.

(((~~(vi)~~))) (f) **"Solar energy system"** includes both a module-based solar energy system and a stirling converter-based solar energy system.

(g) **"Utility"** means a light and power business, an electric cooperative, or a mutual corporation that provides electricity service.

(((~~(e)~~))) (105) **"Customer-generated electricity"** means a community solar project or the alternating current electricity that is generated from a renewable energy system located in Washington state, that is installed on an individual's, ((~~businesses'~~)) business', or local government's ((~~or utility's real~~)) property and the ((~~real~~)) property involved is served by a light and power business.

(((~~(i)~~))) (a) Except for utility-owned community solar systems, a system located on a leasehold interest does not qualify under this definition. ((~~For a community solar project requiring the cooperation of a local governmental entity, the cooperating local governmental entity must own in fee simple the real property on which the solar energy system is located to qualify as "customer-generated electricity." A leasehold interest held by a cooperating local governmental entity will not qualify. However, for nonutility community solar projects, a solar energy system located on land owned in fee simple by a cooperating local governmental entity that is leased to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify as "customer-generated electricity."~~

~~(ii)~~)) (b) Except for a utility-owned solar energy system that is voluntarily funded by the utility's ratepayers, "customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(((~~(f)~~))) (106) **"Local governmental entity"** means any unit of local government of Washington state ((~~including,~~)).

(a) **What is an example of a local governmental entity?** A local governmental entity includes, but is not limited to:

- Counties;
- Cities;
- Towns;
- Municipal corporations;
- Quasi-municipal corporations;
- Special purpose districts;
- Public stadium authorities; or
- Public school districts.

(b) **What is not a local governmental entity?** "Local governmental entity" does not include a state ((~~or~~)), federal, or tribal governmental entity, such as a:

- State park;
- State-owned building;
- State-owned university;
- State-owned college;
- State-owned community college; ((~~and~~))
- Federal-owned building; and
- Tribal-owned building.

(((~~(g)~~))) (107) **"Light and power business"** means the business of operating a plant or system of generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(((~~h~~))) (108) **"Gas distribution business"** means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(((~~i~~))) (109) **"Photovoltaic cell"** means a device that converts light directly into electricity without moving parts.

(((~~j~~))) (110) **"Renewable energy system"** means:

• A solar energy system used in the generation of electricity;

• An anaerobic digester that processes livestock manure into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity; or

• A wind generator used for producing electricity.

(((~~k~~))) (111) **"Solar energy system"** means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(((~~l~~))) (112) **"Solar inverter"** means the device used to convert direct current to alternating current in a ((~~photovoltaic cell~~)) solar energy system.

(((~~m~~))) (113) **"Solar module"** means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(((~~3~~))) (114) **"Stirling converter"** means a device that produces electricity by converting heat from a solar source using a stirling engine.

PART II - PARTICIPATION REQUIREMENTS

(201) Participation by a light and power business in this incentive payment program is discretionary.

(202) Any individual, business, local government, or participant in a qualifying community solar project that owns such a system or is a participant of a community solar project that owns such a system may participate in this incentive payment program.

(203) A state governmental entity, a federal governmental entity, or a tribal governmental entity cannot participate in the incentive payment program.

(204) **Who may receive an incentive payment?** ((~~Any of the following may receive an incentive payment:~~

~~(a) An individual, business, or local governmental entity, not in a light and power business or in a gas distribution business owning a qualifying renewable energy system; or~~

~~(b) A participant in a community solar project with an ownership interest in the:~~

~~• Solar energy system;~~

~~• Company that owns the solar energy system; or~~

~~• Value of the electricity produced by the solar energy system.~~

~~(4)~~)) Incentive payments may be received by:

• Customers of a light and power business that own a renewable energy system that produces "customer-generated electricity"; or

• Participants in a community solar project that owns a renewable energy system that produces "customer-generated electricity."

(205) **Must ((~~you~~)) the owner of the property on which the renewable energy system is located be a customer of ((~~a~~)) the light and power business ((~~to be a recipient of an incentive payment~~))?** Yes, only ((~~owners of qualifying~~)) renewable energy systems that produce "customer-generated electricity" located on interconnected properties ((~~belonging to~~)) owned by customers of ((~~a~~)) the light and power business serving the area in which the system is located are eligible ((~~to receive~~)) for participation in this incentive ((~~payments. This is because the~~)) program.

(206) Electricity generated by the renewable energy system must be able to be transformed or transmitted for entry into or operated in parallel with electricity transmission and distribution systems.

(207) In the case of community solar projects, the ((~~land~~)) property on which the renewable energy system is located ((~~may be~~)) is either:

• Owned in fee simple by a hosting local governmental entity; or

• Owned ((~~in fee simple~~)) or leased by ((~~a~~)) the utility ((~~and they will be the customer of the light and power business.~~

~~(5)~~)) that owns the system.

(208) The host of a community solar project must be:

• A customer of the light and power business serving the area in which the system is located; or

• The utility that owns the system located in its service area.

(209) The participants in a nonutility community solar project are not required to be customers of the light and power business serving the area in which the system is located but the local governmental entity hosting the community solar system must be a customer of that light and power business.

(210) Utility-owned community solar projects are voluntarily funded by the utility's ratepayers and only the utility's ratepayers may be participants.

(211) Eligible participants of a nonutility community solar project described under RCW 82.16.110 (2)(a)(i) are limited to local individuals, households, nonprofit organizations, or nonutility businesses. Therefore, to qualify:

• As "local" the participant must reside or have a business located on a property served by the same light and power business serving the area in which the system is located; and

• If two or more individuals are living together in one household with one customer account with the light and power business these individuals are in one household and though they may each individually participate in this program these same individuals living together in the one household will only receive one five thousand dollar annual limit.

(212) Eligible participants of a nonutility community solar project that are business entities, such as a limited liability company or a corporation, will be analyzed for participant eligibility and the five thousand dollar annual limit by looking through the business entity to the members or stockholders that own the business entity.

PART III - APPLICATION REQUIREMENTS

(301) **To whom do I apply?** An applicant must apply to the light and power business serving the ((~~real~~)) property on which the renewable energy system is located. The applicant applies for an incentive payment based on customer-gener-

ated electricity during each fiscal year beginning on July 1st and ending on June 30th. ((~~Participation by a light and power business in the cost recovery incentive program is voluntary. An applicant should first contact their light and power business to verify that it is participating~~

~~(6)~~)) (302) **Do I need ((~~a~~)) an approved certification before applying to the light and power business?** Before submitting the first application to the light and power business for the incentive payment allowed under this section, the applicant must submit to the department of revenue a certification ((~~request~~)) in a form and manner prescribed by the department of revenue.

(a) There are two forms for this certification, found at the department of revenue's web site at ((~~www.dor.wa.gov~~)) http://dor.wa.gov, entitled:

• Community Solar Project Renewable Energy System Cost Recovery Certification; and

• Renewable Energy System Cost Recovery Certification.

(b) The department of revenue will evaluate these certifications ((~~requests with~~)) and may request assistance from the climate and rural energy development center ((~~at~~)) (also known as the Washington State University extension energy program) concerning technical equipment requirements.

(c) In the case of community solar projects:

• Only one certification can be obtained for each system;

• Applicants may rely upon a prior issued certification of the system;

• The administrator must apply for approval of the certification if it is a community solar project placed on property owned by a cooperating local government and owned by individuals, households, nonprofit organizations, or nonutility businesses;

• The company acting as an administrator must apply for approval of the certification if it is a community solar project placed on property owned by a cooperating local government and owned by a company; and

• The utility acting as administrator must apply for approval of the certification if it is a utility-owned community solar project on property owned or leased by the utility.

(d) **Property purchased with existing system.** Except for community solar projects, if an applicant has just purchased a property with a certified renewable energy system, the applicant must ((~~reapply for~~)) submit a new certification ((~~as the new owner with~~)) to the department of revenue.

(e) **Additions or changes to an existing certified system.** If the owner of an existing certified system adds to or makes other changes to the system, then the owner must apply to the department of revenue for approval of a new certification.

(f) **Requirements of the certification ((~~request~~)).** ((~~This~~)) The certification ((~~request~~)) must contain, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) The applicant must be the owner of the renewable energy system, the administrator of a community solar project, or the company that owns the system in a company-owned community solar project.

(B) If the applicant is an administrator of a community solar project, the certification ((~~request~~)) must also include the current name and address of each of the participants in the community solar project.

(((~~B~~))) (C) If the applicant is a company that owns a community solar project that is acting as an administrator, the certification ((~~request~~)) must also include the current name and address of each member of the company that is a participant in the community solar project.

(ii) The applicant's tax registration number;

(iii) Confirmation that the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) ((~~Any solar inverters and solar modules manufactured in Washington state;~~

~~(B)~~)) A wind generator powered by blades manufactured in Washington state;

(((~~C~~))) (B) A wind generator with an inverter manufactured in Washington state;

(((~~D~~))) (C) A solar inverter manufactured in Washington state;

(((~~E~~))) (D) A solar module manufactured in Washington state;

(E) A solar stirling converter manufactured in Washington state;

(F) Solar or wind equipment manufactured outside of Washington state; or

(G) An anaerobic digester which processes manure from livestock into biogas and dried manure using microorganisms in a closed oxygen-free container, in which the biogas (such as methane) fuels a generator that creates electricity.

(iv) Confirmation that the electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems;

(v) The date that the local jurisdiction issued its final electrical permit on the renewable energy system; and

(vi) A statement that the applicant understands that this information is true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(((~~f~~))) (g) **Response from the department of revenue.** Within thirty days of receipt of the certification the department of revenue must notify the applicant whether the renewable energy system qualifies for an incentive payment under this section. This notification may be delivered ((~~by~~)) either by mail or electronically as provided in RCW 82.32.135.

(i) The department of revenue may consult with the climate and rural energy development center ((~~to determine eligibility for the incentive~~)) (also known as the Washington State University extension energy program) for technical advice regarding the renewable energy system and its components.

(ii) System certifications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(((~~m~~)))(l).

(((~~7~~))) (h) **What happens if the department of revenue notifies me that the original certification does not qualify for an incentive payment or provides me notice of intent to revoke approval of a certification?** The department of revenue may deny or revoke the approval of a system's certi-

fication and you may appeal this final determination. The appeal provisions under Part VIII of this rule apply here.

(303) **How often do I apply to the light and power business?** You must annually apply by August 1st of each year to the light and power business serving the location of your renewable energy system. The incentive payment applied for covers the production of electricity by the system between July 1st and June 30th of each prior fiscal year.

((~~(8)~~)) (304) **What about the application to the light and power business?** The department of revenue has two application forms for use by customers when applying for the incentive payment with their light and power business. These applications ((~~are~~)) found at the department of revenue's web site at www.dor.wa.gov, are entitled:

• Community Solar Project Renewable Energy System Cost Recovery Annual Incentive Payment Application; and

• Renewable Energy System Cost Recovery Annual Incentive Payment Application.

However, individual light and power businesses may create their own forms or use the department of revenue's form in conjunction with their additional addendums.

(a) **Information required on the application to the light and power business.** The application must include, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system:

(A) If the applicant is an administrator of a community solar project, the application must also include the current name and address of each of the participants in the community solar project.

(B) If the applicant is a company that owns a community solar project that is acting as an administrator, the application must also include the current name and address of each member of the company that is a participant in the community solar project.

(C) If the applicant is the utility involved with a utility-owned community solar project that is acting as an administrator, the application must also include the current name and address of each customer-ratepayer participating in the community solar project.

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of gross kilowatt-hours generated by the renewable energy system in the prior fiscal year; and

(v) A statement that the applicant understands that this information is provided to the department of revenue in determining whether the light and power business correctly calculates its credit allowed for customer incentive payments and that the statements are true, complete, and correct to the best of applicant's knowledge and belief under penalty of perjury.

(b) **Light and power business response.** Within sixty days of receipt of the incentive payment application the light and power business serving the location of the system must notify the applicant in writing whether the incentive payment will be authorized or denied.

(i) The light and power business may consult with the climate and rural energy development center (also known as the Washington State University extension energy program) to ((~~determine eligibility for the~~)) receive technical advice regarding this incentive payment program.

(ii) Incentive payment applications and the information contained therein are subject to disclosure under RCW 82.32.330 (3)(((~~(m)~~))) (l).

(c) **Light and power business may verify initial certification of system.** Your light and power business has the authority to verify and make separate determinations on the matters covered in your earlier certification with the department of revenue. If your light and power business finds the certification process made an error in determining whether your renewable energy system's generated electricity can be transformed or transmitted for entry into or operation in parallel with the electricity transmission and distribution systems, then the determination by the light and power business ((~~will be controlling and it has the authority to decertify your system~~)) may result in the department of revenue issuing a notice of intent to revoke approval of certification regarding the system. The appeal provisions under Part VIII of this rule apply here.

((~~(9)~~)) (305) **What are the ((~~possible~~)) procedures an applicant and their light and power business ((~~may~~)) follow in setting up incentive payments?** This ((~~subsection~~)) section first discusses ((~~recommended~~)) procedures an applicant ((~~should~~)) follows when requesting that the light and power businesses set up an applicant's incentive payments and ((~~second~~)) then discusses the ((~~possible~~)) procedures the light and power business ((~~may~~)) follows.

(a) **Steps an applicant ((~~may~~)) must take if the light and power business is participating in the incentive program include, but are not limited to:**

((~~• Contacting their light and power business to ask whether it is participating and what application procedures apply;~~))

• Submitting an application to the light and power business that serves ((~~their~~)) the property where the renewable energy system is located;

• Submitting to the light and power business proof that the applicant's renewable energy system ((~~is certified~~)) certification was approved by the department of revenue for the incentive payment program;

• Submitting to the light and power business a copy of the approved certification and letter from the department of revenue; and

• Signing an agreement that the light and power business will provide to the applicant.

(b) **Steps the applicant's local light and power business ((~~may~~)) must take if it is participating in the incentive program include, but are not limited to:**

((~~• Sending a utility serviceman to inspect the system;~~))

• Installing an electric production meter, if one meeting its specifications is not already installed, since a production-grade meter is required to properly measure the system's gross production;

• Reading the applicant's production meter at least annually;

• Processing the annual incentive payment;

• Notifying the applicant within sixty days whether the incentive payment is authorized or denied;

• Calculating annual ((~~production~~)) incentive payments based on the meter reading or readings made prior to the accounting date of July 1st of the system's annual gross production; and

• ((~~Sending~~)) Paying the applicant's incentive payment on or before December 15th.

The light and power business may pay the applicant's incentive payment by either sending a check ((~~or~~)) or ((~~before December 15th; and~~

~~• Alternatively, the light and power business may credit~~)) crediting the applicant's account ((~~on or before December 15th~~)). However, if the applicant is a net generator, that applicant must be paid by check. ((~~Net generator means the measured difference, in kilowatt-hours between the electricity supplied to a power and light business' customer and the electricity generated by the same customer from the renewable energy system and delivered to the light and power business at the same point of interconnection that is in excess of the electricity used at the same location.~~

~~(10)~~)) (306) **How may the procedures differ ((~~with my light and power business~~)) when dealing with a utility-owned solar energy system?** A utility-owned community solar project is voluntarily funded by ratepayers of the specific ((~~light and power business~~)) utility offering the program. A utility for purposes of this incentive program is a specific type of light and power business, electric cooperative, or mutual corporation that provides retail electric service to customers. A light and power business, electric cooperative, or mutual corporation that generates electricity but only sells power to wholesale customers does not qualify as a utility for the incentive program. Only customer-ratepayers of that utility may participate in the program. In exchange for a customer's support, the utility gives contributors a payment or credit on their utility bills for the value of the electricity produced by the project. It is important that the customer-ratepayers realize when contributing to this program, they are in effect investing in the utility to receive a stated "value." This value is defined in the agreement between the customer-ratepayers and the utility and this agreement is a contract. Customer-ratepayers need to protect their interest in this investment the same as a person would in any other investment.

(((~~11~~))) (307) **What is the formal agreement between the applicant and the light and power business?** The formal agreement between the applicant and the light and power business serving the property governs the relationship between the parties. This document may:

• Contain the necessary safety requirements and interconnection standards;

• Allow the light and power business the contractual right to review the applicant's substantiation documents for four years, upon five working days' notice;

• Allow the light and power business the contractual right to assess against the applicant, with interest, for any overpayment of incentive payments;

• Delineate any extra metering costs for an electric production meter to be installed on the applicant's property;

• Contain a statement allowing the department of revenue to send proof of the applicant's system certification electronically to applicant's light and power business, which will include the applicant's department of revenue taxpayer's identification number;

• Contain other information required by the light and power business to effectuate and properly process the applicant's incentive payment; and

• In the case of a utility-owned solar energy system, contain a detailed description of the "value" the customer-ratepayer will receive in consideration of the financial support given to the utility.

PART IV - GENERAL PROVISIONS

(((~~12~~))) (401) **Is there a time limitation of when incentive payment may be made for a system's generated electricity?** Yes, incentive payments may only be made for kilowatt-hours generated on or after July 1, 2005, through June 30, 2020. The right to earn tax credits under this section expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(402) **Who must own the property on which the renewable energy system is located to qualify for incentive payments?** The answer depends on whether the renewable energy system is singly owned or community owned.

(a) Single-owned systems, meaning systems owned by individuals, businesses, and a local governmental entity that is not in the light and power business, must be located on property owned by the same person that owns or leases the system under a long-term lease of at least ten years duration with an option to purchase at the end of the lease term for a set fair market value. Thus, single-owned systems must have a unity of ownership between the owned property on which the system is located and the owned or long-term leased system.

(b) There are three types of community solar projects that have different property ownership requirements.

• The standard community solar project described by RCW 82.16.110 (2)(a)(i) and the company-owned community solar project described in RCW 82.16.110 (2)(a)(iii) require that the hosting local governmental entity own the property on which the system is located in fee simple. A solar energy system located on property owned in fee simple by a cooperating local governmental entity that is either owned or under a long-term lease of at least ten years duration with an option to purchase at the end of the lease term for a set fair market value to local individuals, households, nonprofit organizations, nonutility businesses or companies will qualify for the incentive program.

• The utility-owned community solar project described in RCW 82.16.110 (2)(a)(ii) requires that the utility either own or lease the property on which the system is located.

(403) **Must the renewable energy system be owned or can it be leased?** The renewable energy system must be either owned or subject to a long-term lease of ten years or more by the ((~~individual, business, local governmental entity, utility in a utility-owned renewable energy system, local individuals, households, nonprofit organizations or nonutility business in a community-solar project, or company in a company-owned system~~)) customer receiving the incentive payments from a single-owned system's generated electricity or by the community solar project's company, utility owner, or

local owners receiving the incentive payments from a community-owned system's generated electricity. Leasing a renewable energy system ((~~does not constitute ownership~~)) requires that the property's owner leasehold interest in the singly owned system and the community-system owner's leasehold interest in the community solar project is ten years or more in duration with an option to purchase at the end of the lease term for a set fair market value.

(404) **May the purchase of the renewable energy system be financed?** Yes, the purchase of a renewable energy system through financing that uses standard practices of the lending industry will not disqualify the owner from participation in this incentive program. Further, a third party may finance and own the renewable energy system provided the property owner's leasehold interest in the singly owned system and the community-system owner's leasehold interest in the community solar project is ten years or more in duration with an option to purchase at the end of the lease term for a set fair market value.

(((~~13~~))) (405) **Must you keep records regarding your incentive payments?** Applicants receiving incentive payments must keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received.

(a) **Examination of records.** Such records must be open for examination at any time upon notice by the light and power business that made the payment or by the department of revenue.

(b) **Overpayment.** If upon examination of any records or from other information obtained by the light and power business or department of revenue it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the light and power business may assess against the person the amount found to have been paid in excess of the correct amount of the incentive payment. Interest will be added to that amount in the manner that the department of revenue assesses interest upon delinquent tax under RCW 82.32.050.

(c) **Underpayment.** If it appears that the amount of incentive paid is less than the correct amount of incentive payable, the light and power business may authorize additional payment.

(((~~14~~))) (406) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(407) **When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation?** In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:

• Separate meters;

• Separate inverters;

• Separate certification documents submitted to the department of revenue; and

• Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.

(408) **Are the renewable energy system's environmental attributes transferred?** The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. RCW 82.16.120(8). An environmental attribute is often designated as a renewable energy credit and gives the holder of the credit the benefits from the generation of the new power from a renewable source. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

PART V - COMPUTATION OF THE AMOUNT OF THE INCENTIVE PAYMENT

(501) **How is an incentive payment computed?** The computation for the incentive payment involves a base rate that is multiplied by an economic development factor determined by the amount of the system's manufacture in Washington state to determine the incentive payment rate. The incentive payment rate is then multiplied by the system's gross kilowatt-hours generated to determine the incentive payment.

(a) **Determining the base rate.** The first step in computing the incentive payment is to determine the correct base rate to apply, specifically:

• Fifteen cents per economic development kilowatt-hour; or

• Thirty cents per economic development kilowatt-hour for community solar projects.

If requests for incentive payments exceed the amount of funds available for credit to the participating light and power business, the incentive payments must be reduced proportionately.

(b) **Economic development factors.** For the purposes of this computation, the base rate paid for the investment cost recovery incentive may be multiplied by the following economic development factors:

(i) For customer-generated electricity produced using solar modules or stirling converters manufactured in Washington state, two and four-tenths;

(ii) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(iii) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment, or using a wind generator equipped with blades manufactured in Washington state, one; and

(iv) For all other customer-generated electricity produced by wind, eight-tenths.

(c) **What if a ((~~solar~~)) renewable energy system has both a module and inverter manufactured in Washington state, both a stirling converter and inverter manufactured in Washington state, or ((~~a wind generator has~~)) both blades and inverter manufactured in Washington state?** In these ((~~two~~)) three situations the above-described economic development factors are added together. For example, if your system is solar and has both solar modules and an inverter manufactured in Washington state, you would compute your incentive payment by using the factor three and six-tenths (3.6) (computed 2.4 plus 1.2). Therefore, you would multiply either the fifteen cent or thirty cent base rate by three and six-tenths (3.6) to get your incentive payment rate and then multiple this by the gross kilowatt-hours generated to get the incentive payment amount. ((~~Further~~)) The incentive payment is calculated the same in a situation involving a solar stirling converter and inverter, resulting in a combined factor of three and six-tenths (3.6) (computed 2.4 plus 1.2). However, if your wind generator has both blades and an inverter manufactured in Washington state you would multiply the fifteen cent((~~s~~)) base rate by two and two-tenths (2.2) (computed 1.0 plus 1.2) to ((~~get~~)) calculate your incentive payment rate and then multiply this by the kilowatt-hours generated ((~~to get~~)) for the incentive payment amount.

(d) **Tables for use in computation.** The following tables describe the computation of the incentive payment using the appropriate base rate and then multiplying it by the applicable economic development factors to determine the incentive payment rate. The incentive payment rate is then multiplied by the gross kilowatt-hours generated. The actual incentive payment you receive must be computed using your renewable energy system's actual measured gross electric kilowatt-hours generated.

Annual Incentive Payment Calculation Table for Noncommunity Projects

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules or solar stirling converters manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.36		
Solar or wind generating equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.18		
Anaerobic digester or other solar equipment or wind generator equipped with blades manufactured in Washington state **Factor: 1.0** (one)	$0.15		
All other electricity produced by wind **Factor: 0.8** (eight-tenths)	$0.12		
Both solar modules and inverters manufactured in Washington state. **Factor:** (2.4 + 1.2) = 3.6	$0.54		

Customer-generated power applicable factors	Base rate (0.15) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Wind generator equipment with both blades and inverter manufactured in Washington state. **Factor:** (1.0 + 1.2) = 2.2	$0.33		

Annual Incentive Payment Calculation Table for Community Solar Projects

Customer-generated power applicable factors	Base rate (0.30) multiplied by applicable factor equals incentive payment rate	Gross kilowatt-hours generated	Incentive payment amount equals incentive payment rate multiplied by kilowatt-hours generated
Solar modules or solar stirling converters manufactured in Washington state **Factor: 2.4** (two and four-tenths)	$0.72		
Solar equipment with an inverter manufactured in Washington state **Factor: 1.2** (one and two-tenths)	$0.36		
Other solar equipment **Factor: 1.0** (one)	$0.30		
Both solar modules and inverters manufactured in Washington state. **Factor:** (2.4 + 1.2) = 3.6	$1.08		

(e) **Examples to illustrate how incentive payments are calculated.** Assume for the following ten examples that the renewable energy system involved generates 2,500 kilowatt-hours.

(i) If a noncommunity solar energy system has a module or solar stirling converter manufactured in Washington state ((~~and~~)) combined with an inverter manufactured out-of-state the computation would be as follows: (0.15 x 2.4) x 2,500 = $900.00.

(ii) If a noncommunity solar energy system has an out-of-state module ((~~and~~)) or solar stirling converter combined with an inverter manufactured in Washington state the computation would be as follows: (0.15 x 1.2) x 2,500 = $450.00.

(iii) If a noncommunity solar energy system has ((~~both~~)) modules ((~~and~~)) or solar stirling converters manufactured in Washington state combined with an inverter manufactured in Washington state the computation would be as follows: (0.15 x (2.4 + 1.2)) x 2,500 = $1,350.00.

(iv) If wind generator equipment has out-of-state blades ((~~and~~)) combined with an inverter manufactured in Washington state the computation would be as follows: (0.15 x 1.2) x 2,500 = $450.00.

(v) If wind generator equipment has blades manufactured in Washington state ((~~and~~)) combined with an out-of-state inverter the computation would be as follows: (0.15 x 1.0) x 2,500 = $375.00.

(vi) If wind generator equipment has both blades and an inverter manufactured in Washington state the computation would be as follows: (0.15 x (1.0 + 1.2)) x 2,500 = $825.00.

(vii) If wind generator equipment has both out-of-state blades and an out-of-state inverter the computation would be as follows: (0.15 x 0.8) x 2,500 = $300.00.

(viii) If a community solar energy system has ((~~a~~)) modules or a solar stirling converter manufactured in Washington state ((~~and~~)) combined with an out-of-state inverter the computation would be as follows: (0.30 x 2.4) x 2,500 = $1,800.00.

(ix) If a community solar energy system has ((~~an~~)) out-of-state modules ((~~and~~)) or solar stirling converters combined with an inverter manufactured in Washington state the computation would be as follows: (0.30 x 1.2) x 2,500 = $900.00.

(x) If a community solar energy system has both modules ((~~and~~)) or solar stirling converters manufactured in Washington state combined with an inverter manufactured in Washington state the computation would be as follows: (0.30 x (2.4 + 1.2)) x 2,500 = $2,700.00.

(((~~(15)~~))) (502) **Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year. If two or more individuals are living together in one household with one customer account with the light and power business these individuals are in one household and though they may each individually participate in this program these same individuals living together in one household will only receive one five thousand dollar annual limit.

(b) **Community solar projects.**

• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

• Eligible participants of a community solar project that are business entities, such as a limited liability company or a corporation, will be analyzed for purposes of the five thousand dollar annual limit by looking through the business entity to the members or stockholders that own the business entity and combining the owners' interests from all eligible systems under this incentive program when determining whether any of the individual owners exceed their five thousand dollar annual limit.

PART VI - MANUFACTURED IN WASHINGTON STATE

(601) **What constitutes manufactured in Washington?** ((~~The statute authorizing this incentive payment program defines a "solar module" to mean the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output. Thus, for a module to qualify as manufactured in Washington state, the manufactured module must meet this definition. However,~~))

(a) For a solar inverter, solar module, stirling converter, or wind blade to qualify as manufactured in Washington state, the manufactured component must meet these definitions.

• "Solar inverter" means the device used to convert direct current to alternating current in a solar energy system.

• "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

• "Stirling converter" means a device that produces electricity by converting heat from a solar source utilizing a stirling engine.

• "Wind blade" is the portion of the rotor component of wind generator equipment that converts wind energy to low speed rotational energy.

(b) Is combining products manufacturing? When determining whether an inverter, module, stirling converter, or blades are manufactured in Washington the department of revenue ((~~will apply the definition of manufacturing in WAC 458-20-136. Of particular interest is WAC 458-20-136(7), which defines when assembly constitutes manufacturing. The department of revenue, in consultation with the climate and rural energy development center at Washington State University's energy extension, will apply this rule on manufacturing when analyzing a request for certification~~)) considers various factors in determining if a person combining various items into a single package is engaged in a manufacturing activity. Any single one of the following factors is not considered conclusive evidence of a manufacturing activity:

(i) The ingredients are purchased from various suppliers;

(ii) The person combining the ingredients attaches his or her own label to the resulting product;

(iii) The ingredients are purchased in bulk and broken down to smaller sizes;

(iv) The combined product is marketed at a substantially different value from the selling price of the individual components; and

(v) The person combining the items does not sell the individual items except within the package.

(((~~(16)~~))) (602) **How can an applicant determine the system's level of manufacture in Washington state?** ((~~For systems installed after the date this section is adopted,~~)) The manufacturer must request approval from the department of revenue of its certification that the manufacturer's product, such as an inverter, module, stirling converter, or wind blade qualifies as made in Washington state. The manufacturer must supply the department of revenue with a statement delineating the ((~~system's~~)) product's level of manufacture in Washington state, signed under penalty of perjury.

(a) **Field visit to view manufacturing process.** The department of revenue will perform a field visit to view the manufacturing process for the product, which may also include, but is not limited to:

• An inspection of the process by an engineer or other technical expert;

• Testing and evaluation of a product pulled off the production line;

• Review of purchase invoices to verify the vendor sources for the parts used in the manufacturing of the product;

• Inspection of the production line; and

• Requests for clarification concerning questions, if any, discovered during the inspection.

(b) **Approval or disapproval of manufacturer's certification.** The department of revenue will issue a ((~~binding letter ruling to the manufacturer stating its determination~~)) written approval or disapproval of the manufacturer's certification of a product qualifying as made in Washington state.

(((~~(a)~~))) (c) **Manufacturer's statement.** This manufacturer's statement must be specific as to what processes were carried out in Washington state to qualify the ((~~system~~)) product for one or more of the multiplying economic development factors discussed in subsection (((~~(13)~~))) (14) of this section. The manufacturer can request ((~~a binding letter ruling~~)) an approval of its certification from the department of revenue at ((~~this~~)) its web address:

http://dor.wa.gov((/content/contactus/con_TaxRulings.aspx)).

(((b))) (d) **Penalty of perjury.** The manufacturer's statement must be under penalty of perjury and specifically state that the manufacturer understands that the department of revenue will use the statement in deciding whether customer incentive payments and corresponding tax credits are allowed under the renewable energy system cost recovery incentive payment program.

(((c))) (e) **Inspection of product's manufacturing process.** The department of revenue reserves the right to perform an inspection of the manufacturing processes for each product, such as an inverter, module, wind blade, or solar stirling converter, that has been previously certified as manufactured in Washington state. This is to verify that the product continues to qualify as manufactured in Washington state. This inspection will not occur more than once a year and will include a field visit as described in (a) of this subsection.

(f) **Document retention.** The applicant must retain this documentation for five years after the receipt of applicant's last incentive payment from the light and power business.

(((d) **Certificate of manufacture in Washington state.** If the department of revenue has issued a binding letter ruling stating a module, inverter, or blades qualifies as manufactured in Washington state, the manufacturer may apply to the climate and rural energy development center at Washington State University energy program for a certificate stating the same.

(17))) (g) **Denial or revocation of approval of certification.** The department of revenue may revoke the approval of certification that a product, such as an inverter, module, stirling converter, or wind blade is "made in Washington state" when it finds that the product does not qualify for certification as manufactured in Washington state.

The appeal provisions under Part VIII of this rule apply here.

(603) **What about guidelines and standards for manufactured in Washington?** The climate and rural energy development center at the Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(((18) **Do condominiums or community solar projects need more than one meter?** No, the requirement of measuring the kilowatt hours of customer-generated electricity for computing the incentive payments only requires one meter for the renewable energy system, not one meter for each owner, in the case of a condominium, or each applicant, in the case of a community solar project. Thus for example, in the case of a renewable energy system on a condominium with multiple owners, while such a system would not qualify as a community solar project, only one meter is needed to measure the system's gross generation and then each owner's share can be calculated by using each owner's percentage of ownership in the condominium building on which the system is located. With regard to a community solar project, only one meter is needed to measure the system's gross generation and each applicant's share in the project can be calculated by each applicant's interest in the project.

(19) **Is there an annual limit on an incentive payment to one payee?** There is an annual limit on an incentive payment.

(a) **Applicant limit.** No individual, household, business, or local governmental entity is eligible for incentive payments of more than five thousand dollars per year.

(b) **Community solar projects.**

• Each owner or member of a company in a community solar project located on a cooperating local government's property is eligible for an incentive payment, not to exceed five thousand dollars per year, based on their ownership share.

• Each ratepayer in a utility-owned community solar project is eligible for an incentive payment, not to exceed five thousand dollars per year, in proportion to their contribution resulting in their share of the value of electricity generated.

(20) **Are the renewable energy system's environmental attributes transferred?** Except for utility owned community solar systems, the environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the incentive payment. In the case of utility-owned community solar system, the utility involved owns the environmental attributes of the renewable energy system.

(21) **Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against public utility taxes in an amount equal to incentive payments made in any fiscal year under RCW 82.16.120. The following restrictions apply:

• The credit must be taken in a form and manner as required by the department of revenue.

• The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater.

• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business' taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollars, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

• Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.110 (1)(a)(ii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar projects in total may not exceed five percent of the fis-

~~cal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if Light and Power Business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollars, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.~~

~~**Computation examples.** The following table provides:~~

~~Taxable Power Sales by the light and power business~~	~~Maximum tax credit (greater of .5% of total taxable power sales or $100,000)~~	~~Maximum amount of tax credit available for incentive payments in a utility-owned community solar project~~	~~Maximum amount of tax credit available for incentive payments in a company-owned community solar project~~
~~$5,000,000~~	~~$100,000~~	~~$25,000~~	~~$5,000~~
~~$50,000,000~~	~~$250,000~~	~~$62,500~~	~~$12,500~~
~~$500,000,000~~	~~$2,500,000~~	~~$625,000~~	~~$125,000~~

~~• The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.~~

~~• Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.~~

~~(22) **When community solar projects are located on the same property, how do you determine whether their systems are one combined system or separate systems for determining the seventy-five kilowatts limitation?** In determining whether a community solar project's system is capable of generating more than seventy-five kilowatts of electricity when more than one community solar project is located on one property, the department of revenue will treat each project's system as separate from the other projects if there are:~~

~~• Separate meters;~~

~~• Separate inverters;~~

~~• Separate certification documents submitted to the department of revenue; and~~

~~• Separate owners in each community solar project, except for utility-owned systems that are voluntarily funded by the utility's ratepayers, which must have a majority of different ratepayers funding each system.~~

~~(23) **What if a light and power business claims an incentive payment in excess of the correct amount?** For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.~~

~~• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.~~

~~• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.~~))

PART VII - TAX ISSUES REGARDING RENEWABLE ENERGY INCENTIVE PROGRAM

(((~~24~~))) (701) **Does the department of revenue consider the incentive payment ((~~taxable~~)) gross income subject to Washington state taxation?** ((~~No, the department of revenue does not consider the incentive payment an applicant receives to be taxable income.~~

(~~25~~))) The answer will depend on whether the electricity is generated by a singly owned system or a community solar system.

(a) **Are singly owned renewable energy systems subject to the B&O tax?** No. The incentive payments for the electricity generated by the singly owned systems are not taxable. This is because that person is not engaged in an activity with the object of gain, benefit, or advantage. All the electricity generated by the system is consumed by the system's owner on that person's own property. This is an energy conservation activity involving that person's own property.

(b) **Do incentive payments received for the electricity generated by a community solar project's system constitute gross income subject to the business and occupation tax?** Yes. The incentive payments for the electricity generated by the nonutility community solar systems are taxable. Nonutility community solar projects are engaged in a business activity because the project involves the object of gain, benefit, or advantage to the project's owners. The energy generated by the solar system is not consumed by the system owner at its property, but is instead purchased and consumed by the system's host at the host's property. The sole benefit to the system's owners is the income from the electricity generated. Therefore, all incentive payments received for the electricity generated by a community solar project's system constitute gross income subject to tax.

(702) **When must a nonutility community solar project register and file a return with the department?** A nonutility community solar project receiving incentive payments under the incentive program will need to register with the department of revenue unless its annual gross income is below the exemption amount for requiring registration. WAC 458-20-101(2) explains that a business whose gross income from all business activities is under the annual exemption amount is not required to register, so long as other requirements are met.

(703) **If a community solar project has gross income above the annual exclusion amount and is required to register, does it then owe tax?** Even some community solar projects that receive gross income above the annual exclusion

amount or are otherwise required to register with the department may still not owe any tax. This is because of the small business credit provided by RCW 82.04.4451 that applies to the business and occupation tax. Consequently, many smaller community solar projects may be able to apply the small business tax credit to offset their business and occupation tax liability.

(704) **If I owe business and occupation tax after applying the small business credit, what is the tax category?** If there is gross income in excess of the small business credit, the category under the business and occupation tax would be "service and other."

(705) **What other payments received by a nonutility community solar project are gross income possibly subject to tax?** The payments from sales of electricity to the hosting local governmental entity that a nonutility community solar project receives for the consumption by the hosting local governmental entity of the electricity generated by the community-solar system is gross income to the community solar project. The amount of the gross income from the host's consumption of the system's generated electricity is the value of that electricity. This is the contractually agreed value between the parties or the equivalent retail value generally charged by the light and power business serving the property. This gross income is subject to the public utility tax since it is income from a system for the generation of electrical energy. RCW 82.16.010 and 82.16.020. However, the public utility tax has an exemption amount described at RCW 82.16.040 that may apply.

(706) **Are the fees paid by members of the company in a company-owned community solar project subject to state taxation?** Yes, administrative fees that the company in a company-owned community solar project charges its members is gross income for the company. This gross income is subject to business and occupation tax under the "service and other" category.

(707) **Are the sale of renewable energy credits subject to state tax?** Yes, the sale of renewable energy credits constitute gross income subject to tax.

(a) If the renewable energy credits created by the community solar system are sold together with the electricity generated by the system, then both the electricity and renewable energy credits will be subject to public utility tax.

(b) However, if the sale of the renewable energy credits and system's generated electricity are sold and priced separately, then the renewable energy credits will be subject to the business and occupation tax under the "service and other" category and the generated electricity will be subject to public utility tax.

(708) **Is a nonutility community solar project subject to the leasehold excise tax?** Yes. The use of the local government's property that is hosting the community solar system is subject to leasehold excise tax, which is measured by the contract rent. This is because there is a private lease of publicly owned real property. Leasehold excise tax is in lieu of the property tax. Leasehold excise tax is measured by the maximum attainable contract rent received by the lessor paid for use of the public property. Contract rent is the amount of consideration due as payment for the leasehold interest. Consideration does not have to be in the form of cash. RCW 82.29A.020 and 82.29A.030.

(709) **What is the relationship between the department of revenue and the light and power business under this program?** The department of revenue is not regulating light and power businesses; it is only administering a tax credit program relating to the public utility tax. Therefore, for purposes of ((~~the customer investment cost recovery~~)) this incentive payment program, the department of revenue will generally focus its audit of light and power businesses to include, but not be limited to, whether:

• Claimed credit amount equals the amount of the total incentive payments made during the fiscal year;

• Each individual incentive payment is properly calculated;

• Payment to each applicant or participant in a community solar project is proportionally reduced by an equal percentage if the limit of total allowed credits is reached;

• Applicant payments are based on measured gross production of the renewable energy systems measured by a production grade meter read at least annually by the light and power business; and

• The credit and incentive payment limitations have not been exceeded.

(710) **Is the light and power business allowed a tax credit for the amount of incentive payments made during the year?** A light and power business will be allowed a credit against its public utility taxes in an amount equal to incentive payments made to its customers or participants in a nonutility community solar project in any fiscal year under RCW 82.16.120. The following restrictions apply:

• The credit must be taken in a form and manner as required by the department of revenue.

• The credit for the fiscal year may not exceed one-half percent of the light and power business' taxable power sales due under RCW 82.16.120 (1)(b) or one hundred thousand dollars, whichever is greater.

• Incentive payments to applicants in a utility-owned community solar project as defined in RCW 82.16.110 (2)(a)(ii) may only account for up to twenty-five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all utility-owned community solar projects in total may not exceed twenty-five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if a light and power business's taxable power sales are six million dollars, the maximum available credit is one hundred thousand dollars, which is greater than one-half percent of the six million dollar taxable power sales. Of that one hundred thousand dollar credit limit, the maximum amount of incentive payments to applicants in a utility-owned solar project is twenty-five thousand dollars.

• Incentive payments to participants in a company-owned community solar project as defined in RCW 82.16.110 (2)(a)(iii) may only account for up to five percent of the total allowable credit. This means that the amount of the light and power business's credit on its public utility tax made on production from all company-owned community solar proj-

ects in total may not exceed five percent of the fiscal year limitation of one-half percent of the light and power business's taxable power sales due under RCW 82.16.020 (1)(b) or one hundred thousand dollars, whichever is greater. Thus, for example, if a light and power business has thirty million dollars in taxable power sales, the maximum total tax credit available to the light and power business is one hundred fifty thousand dollars. Of this one hundred fifty thousand dollar credit limit, the maximum tax credit that the light and power business can claim relative to incentive payments to participants in a company-owned community solar project is seven thousand five hundred dollars. Alternatively, the maximum tax credit that the light and power business can claim relative to incentive payments to applicants in a utility-owned solar project is thirty-seven thousand five hundred dollars.

Computation examples. The following table provides:

Taxable power sales by the light and power business	Maximum tax credit (greater of .5% of total taxable power sales or $100,000)	Maximum amount of tax credit available for incentive payments in a utility-owned community solar project	Maximum amount of tax credit available for incentive payments in a company-owned community solar project
$5,000,000	$100,000	$25,000	$5,000
$50,000,000	$250,000	$62,500	$12,500
$500,000,000	$2,500,000	$625,000	$125,000

• The credit may not exceed the tax that would otherwise be due under the public utility tax described in chapter 82.16 RCW. Refunds will not be granted in the place of credits.

• Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(711) **What if a light and power business claims an incentive payment in excess of the correct amount?** For any light and power business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments will be immediately due and payable.

• The department of revenue will assess interest but not penalties on the taxes against which the credit was claimed.

• Interest will be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and will accrue until the taxes against which the credit was claimed are repaid.

PART VIII - APPEALS RIGHTS

(801) **What are the appeal rights under the renewable energy incentive payment program?** There are four different types of actions that could result in a right to an appeal. The four types of actions are the department of revenue:

• Denying a system's certification;

• Revoking a system's certification;

• Denying a manufacturer's certification of a product qualifying as made in Washington state; and

• Revoking a manufacturer's certification of a product qualifying as made in Washington state.

(a) **Same appeal procedures for all four types of action.** The denial or revocation of a certification, described above, are all subject to the same appeal procedures described below. All the appeals involving this renewable energy incentive program are conducted as formal adjudicative proceedings under RCW 34.05.413 through 34.05.476 and chapter 10-08 WAC.

(b) **File your appeal petition within thirty days of receiving notice of the department's action.** If you want to contest the department's action, you must file a timely appeal petition within thirty days of service of the notice of the agency action. RCW 34.05.010(19) defines "service" and includes both service by mail and personal service.

The notice issued by the department will provide you with an explanation of the department's reasons for the denial or revocation and advise you how you may appeal the decision if you disagree. The department's action will be final unless you file an appeal petition with the department within thirty days of service of the notice of the department's action. A form that may be used for contesting the action by the department is available from the department on its web site at http://dor.wa.gov, entitled: Appeal Petition.

(802) **Presiding officer - Final order - Review.** For both a denial of an application for certification and a notice of intent to revoke a previously approved certification, the presiding officer of a formal adjudicative proceeding will be the director, department of revenue, or such person as the director may designate. The presiding officer, whether the director of the department of revenue or such person as the director has designated, will make the final decision and will enter a final order as provided in RCW 34.05.461 (1)(b).

(803) **Petitions for reconsideration.** RCW 34.05.470 governs petitions for reconsideration and provides petitions for reconsideration must be addressed to or delivered to the presiding officer at the address provided in the final order. The petition for reconsideration must be filed and served as required by WAC 10-08-110.

(804) **Judicial review.** Judicial review of the final order of the presiding officer is governed by RCW 34.05.510 through 34.05.598.

WSR 13-20-131
PROPOSED RULES
OFFICE OF FINANCIAL MANAGEMENT
[Filed October 2, 2013, 9:29 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-31-357 How does leave without pay affect the six-year time period used to qualify for step M?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on November 14, 2013, at 8:30 a.m.

Date of Intended Adoption: November 14, 2013.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by November 9, 2013. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by November 9, 2013, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2013-2015 operating budget that was passed by the legislature provides for a longevity step to be added to the state salary schedule effective July 1, 2013. It provides for an approximate 2.5 percent increase. Employees who have been at the top step (step L) in the same salary range for six years will move to the new step M. The new rules and rule modifications that address this new salary step have been permanently adopted effective October 18, 2013. This rule was included in the emergency adoption that was effective July 1, 2013, but was inadvertently left off of the permanent filings. Therefore, we will file a second emergency filing for this rule only and proceed with permanent adoption.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 400 Insurance Building, (360) 902-0483.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

October 2, 2013
Sandi Stewart
Acting Assistant Director
State Human Resources

NEW SECTION

WAC 357-31-357 How does leave without pay affect the six-year time period used to qualify for step M? The six-year time period used to qualify for step M will not be extended for periods of leave without pay.

WSR 13-20-133
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 2, 2013, 9:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-074 on August 6, 2013.

Title of Rule and Other Identifying Information: The department proposes changes to WAC 220-72-011 Oyster drill restricted shellfish areas—Puget Sound.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 8-9, 2013, at 8:30 a.m.

Date of Intended Adoption: December 6-7, 2013.

Submit Written Comments to: Joanna Eide, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Joanna.Eide@dfw.wa.gov, fax (360) 902-2403, by October 31, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by October 31, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department must amend as needed the rules designating tideland areas infested with Japanese oyster drills to protect uninfested tidelands from the transfer of shellfish harboring oyster drills or oyster drill eggs. Surveys indicate that Japanese oyster drills have expanded their range in Birch Bay Park to include previously uninfested tidelands. The department also seeks to correct several typographic errors in the latitude/longitude descriptions of current drill-infested areas, and to clarify existing boundaries. These changes will help perpetuate shellfish resources by minimizing the chances of Japanese oyster drills spreading to uninfested areas through shellfish transfers.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.55 [77.04.055], and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Childers, 1000 Point Whitney Road, Brinnon, WA 98320, (360) 302-3030; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2736; and Enforcement: Chief Steven Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2923.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Most proposed changes are typographical to correct errors to latitude/longitude of existing drill areas. The new infested area, Birch Bay State Park, is a state-owned tideland; therefore no private businesses are affected.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

October 2, 2013
Joanna M. Eide
Administrative Regulations Analyst
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-01-113, filed 12/15/04, effective 1/15/05)

WAC 220-72-011 Oyster drill restricted shellfish areas—Puget Sound. All waters, tidelands, shellfish handling facilities and equipment (including aquaculture vehicles and vessels) operated in conjunction with said waters

and tidelands of Puget Sound within the following areas are designated as oyster drill restricted shellfish areas:

(1) Dungeness Bay—inside and bounded westerly of a line projected from the most easterly tip of Dungeness Spit true-south to the mainland.

(2) Drayton Harbor—inside and southerly of a line projected from the north most tip of Semiahmoo Spit to where the International Boundary line intersects the mainland.

(3) Lummi Bay—inside the Lummi Dike and inside and bounded by a line projected from:

48°46'32" N. Lat.

122°40'00" W. Long.; thence to

48°45'55" N. Lat.

122°40'00" W. Long.; thence to

48°45'55" N. Lat.

122°39'12" W. Long.; then northerly along the beach to the point of origin.

(4) Samish Bay—inside and easterly of a line starting at the most westerly tip of Governor's Point and projected in a southerly direction to the most westerly tip of William Point on Samish Island.

(5) Padilla Bay—easterly (including the Swinomish channel) of a line starting at the most westerly tip of William Point on Samish Island and projected southerly to the most northerly tip of March Point on Fidalgo Island.

(6) Similk and Skagit Bays—northerly of a line projected across Skagit Bay following latitude 48°20' N. and easterly of the Deception Pass bridge.

(7) Liberty Bay—inside and westerly of a line projected true south from the most southerly point at Tower Point.

(8) Dyes Inlet—inside and northerly of a line projected true east from the most northerly tip of Rocky Point to the mainland.

(9) Carr Inlet—

(a) Burley Lagoon—inside and northerly of the Purdy bridge.

(b) Minter Creek—inside and westerly of a line projected from the east shore at 122°41'00" W. Long. true south to 47°21'00" N. Lat., then true west to shore.

(10) Case Inlet—

(a) Rocky Bay and North Bay—northerly of a line projected across Case Inlet following latitude 47°20'44" N.

(b) Vaughn Bay—easterly of a line projected true north from the most northerly point of the southern spit at the mouth of Vaughn Bay to the mainland on the north shore.

(11) Hammersley Inlet and Oakland Bay—inside, westerly and northerly of a line starting at the most southeasterly point of Munson Point and projected in a southeasterly direction to Eagle Point.

(12) Totten Inlet, Oyster Bay and Little Skookum Inlet—inside and southerly of a line starting at the most southeasterly point on Windy Point and projected northeasterly to the most northerly tip of Sandy Point (i.e., the southern base of the Steamboat Island Bridge).

(13) Eld Inlet—

(a) Mud Bay—inside and westerly of a line projected from the most easterly point of Flapjack Point and projected true south to the mainland.

(b) Sanderson Harbor—lying inside and westerly of a line starting at the most northern point on Sanderson Spit and projected northeasterly to the mainland.

(14) Nisqually Flats—inside and southerly of a line starting near the DuPont Dock on the east shore at 47°07'00" N. Lat. and projected true west to the mainland.

(15) Hood Canal—

(a) Quilcene Bay—inside, northerly and easterly of a line starting at the Port of Port Townsend boat ramp north of Coast Seafoods company shellfish hatchery projected easterly to a point at 48°48'10" N. Lat., 122°51'30" W. Long. and then projected southeasterly to the most westerly tip of Fisherman's Point.

(b) Tarboo Bay—inside, northerly and easterly of a line starting at the most northerly tip of Long Spit and then projected true west to the mainland.

(c) The Great Bend to Lynch Cove—inside and bounded easterly by a line projected from the western most point at Musqueti Point true west to the mainland.

(d) Hamma Hamma Flats and Jorsted Creek—inside and westerly of a line projected from:

47°33'15" N. Lat.

123°01'42" W. Long.; thence to

47°32'54" N. Lat.

123°01'06" W. Long.; thence to

47°32'54" N. Lat.

123°01'48" W. Long.; thence to

47°31'00" N. Lat.

((~~123°01'54"~~)) 123°01'48" W. Long.; then true west to shore.

(e) Dosewallips Delta—inside and westerly of lines projected from:

47°41'03" N. Lat.

((~~122°53'45"~~)) 122°53'57.5" W. Long.; thence to

47°41'03" N. Lat.

122°52'24" W. Long.; thence to

((~~47°42'20.6"~~)) 47°42'43.5" N. Lat.

122°52'24" W. Long.; thence to

((~~47°42'20.6"~~)) 47°42'43.5" N. Lat.

((~~122°52'39"~~)) 122°53'10" W. Long.

(f) Point Whitney (including all portions of seawater ponds, lagoon, and shellfish cultivation facilities)—inside and ((~~westerly~~)) southerly of lines projected from:

((~~47°45'43.7"~~)) 47°45'43" N. Lat.

((~~122°51'02"~~)) 122°51'4.7" W. Long.; thence to

((~~45°45'56"~~)) 47°45'52" N. Lat.

((~~122°51'02"~~)) 122°51'4.7" W. Long.; thence to

((~~45°45'56"~~)) 47°45'52" N. Lat.

((~~122°51'12"~~)) 122°51'18" W. Long.; thence to

47°45'45" N. Lat.

((~~122°51'12"~~)) 122°51'18" W. Long.

(g) Duckabush River Mouth—inside and westerly of a line projected from:

47°38'46" N. Lat.

122°54'08" W. Long.; thence to

47°37'55" N. Lat.

122°56'25" W. Long.

(16) Henderson Inlet—South Bay—inside and southerly of a line commencing at a point on the west shore of Henderson Inlet where the south line of Section 17, Twp 19 N R 1

WWM intersects the shoreline, thence projected true east across Henderson Inlet to the east shoreline.

(17) Birch Bay—inside and bounded by a line projected from:

48°53'59" N. Lat.
122°46'33.9" W. Long.; thence northeasterly along the shoreline to
48°54'37.7" N. Lat.
122°45'7.65" W. Long.; thence to
48°54'56" N. Lat.
122°45'31" W. Long.; thence to
48°54'10" N. Lat.
122°46'53.54" W. Long.

WSR 13-20-135
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 2, 2013, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-045.

Title of Rule and Other Identifying Information: Licensing scrap metal recyclers, chapter 308-70 WAC, Scrap metal business—Recycler/processor/supplier, to be added as a new section.

Hearing Location(s): Department of Licensing (DOL), 405 Black Lake Boulevard, Building #2, Conference Room #2105, Olympia, WA 98502, on November 5, 2013, at 1:00 p.m.

Date of Intended Adoption: November 6, 2013.

Submit Written Comments to: Kim Zuchlewski, P.O. Box 9039, Olympia, WA 98507, e-mail kzuchlewsk@dol.wa.gov, fax (360) 586-6703, by October 29, 2013.

Assistance for Persons with Disabilities: Contact Lewis Dennie by October 29, 2013, TTY (360) 664-0116 or (360) 664-6458.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Add new set of rules, chapter 308-70 WAC, to clarify chapter 19.290 RCW where currently no rule exists. The agency and stakeholders have established minimum requirements in areas such as established place of business; record of transactions; scrap metal business license plates; expiration of scrap metal business license; change of address; statement of change in business structure, ownership-interest, or control; change in business structure while licensed; sale, transfer or other disposition of a sole proprietorship licensee; closure of a business; and the department's authority over development, maintenance and monitoring of business applicants. The need for rule exists due to clarifying the passage of ESHB 1552 during the 2013 legislative session.

Reasons Supporting Proposal: Statute lacks clarity and the rule clarifies DOL's authority over scrap metal businesses.

Statutory Authority for Adoption: Chapter 19.290 RCW and RCW 43.24.086.

Statute Being Implemented: Chapter 19.290 RCW and RCW 43.24.086.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DOL, business and professions division, dealer and manufacturer services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lewis Dennie, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6451.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule will not impose any minor costs on the affected businesses, per RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 2, 2013
Damon Monroe
Rules Coordinator

Chapter 308-70 WAC

SCRAP METAL BUSINESS—RECYCLER—PROCESSOR—SUPPLIER

NEW SECTION

WAC 308-70-110 Definitions. (1) Employee means an employee of a scrap metal business who is a person who appears on the payroll records of the business as an employee and for whom Social Security, withholding tax, and all deductions required by law have been made.

(2) Agent, other than an authorized agent of the department of licensing, means a person who presents written authorization from the business bearing the business's official title (i.e., logo, letterhead, etc.).

(3) Department means the department of licensing of the state of Washington.

(4) Director means the director of the department of licensing of the state of Washington.

(5) Normal business hours - Processors and recyclers only. For purposes of inspection of a licensee's licensed premises and records, business hours must be 8:00 a.m. to 5:00 p.m., except for weekends and holidays. Business hours must be posted at the licensee's place of business. This business hour requirement does not apply to suppliers.

(6) Scrap metal - As used in this chapter, scrap metal means any used metal, except gold, silver, or platinum, that is no longer useful as it was intended to be used in its original manufactured form, or that is commonly aggregated for sale based on its intrinsic value to be converted into another form and diverted from the waste stream for recycling purposes. This does not include major component parts as defined in chapters 46.79 and 46.80 RCW.

(7) Common carrier means any person who undertakes to transport property for the general public by motor vehicle for compensation as outlined in chapter 81.80 RCW. For the purposes of this chapter, common carriers licensed under the provisions of chapter 81.80 RCW are exempt from the scrap metal licensing requirements when transporting scrap metal for hire between scrap metal dealers licensed by the state or country in which they operate, and the ownership interest in

the scrap metal is transferred directly between the scrap metal dealers.

NEW SECTION

WAC 308-70-120 Scrap metal business—Application for license. The application for a scrap metal business's license shall contain, in addition to any other information the department may require, evidence the application is approved by the local government planning and zoning authorities pursuant to the provisions of the State Environmental Policy Act, chapter 43.21C RCW.

NEW SECTION

WAC 308-70-130 Fees. The following fees shall be charged by the department of licensing:

Processor and Recycler Application, Initial	$1,250.00
Processor and Recycler Application, Renewal	$625.00
Supplier Application, Initial	$350.00
Supplier Application, Renewal	$175.00

NEW SECTION

WAC 380-70-140 Established place of business. (1) Scrap metal processor.

(a) A scrap metal processor's established place of business is a place where:

(i) Nonferrous metal or private metal property may be stored lawfully; and

(ii) Hydraulic balers, shears, or shredders for recycling nonferrous metal, private metal property, and commercial metal property may be used lawfully.

(b) There must be a building in which:

(i) The scrap metal processor's license is conspicuously displayed;

(ii) An owner or employee is available during normal business hours; and

(iii) The business books and records are kept and made available for inspection during normal business hours.

(c) There must be an exterior sign with the business name that is clearly visible to the major avenue of traffic during business hours.

(d) The business's operating hours must be clearly posted and must meet or exceed normal business hours as defined in WAC 308-70-110(5).

(2) Scrap metal recycler.

(a) A scrap metal recycler's established place of business is a place where nonferrous metal or private metal property may be stored lawfully.

(b) There must be a building in which:

(i) The scrap metal recycler's license is conspicuously displayed;

(ii) An owner or employee of the business is available during normal business hours; and

(iii) The business books and records are kept and made available for inspection during normal business hours.

(c) There must be an exterior sign with the business name that is clearly visible to the major avenue of traffic during business hours.

(d) The business's operating hours must be clearly posted and must meet or exceed normal business hours as defined in WAC 308-70-110(5).

(3) Scrap metal supplier. A scrap metal supplier's established place of business is:

(a) An address at which the scrap metal supplier receives mail and can normally be reached; and

(b) Where the business books and records are kept and made available for inspection.

(4) The director may waive any requirements pertaining to a scrap metal business's established place of business if such waiver both serves the purposes of this chapter and is necessary due to unique circumstances.

NEW SECTION

WAC 308-70-150 Record of transactions. Any records originally created and retained electronically must be made available in hard copy upon the request of any designated authority named in chapter 19.290 RCW.

NEW SECTION

WAC 308-70-160 Scrap metal business license plates. (1) Each plate set must be renewed annually. The cost for each plate set is five dollars.

(2) The scrap metal business plates may be split, with one being displayed on the front of the towing vehicle and the other on the rear of the vehicle being towed.

NEW SECTION

WAC 308-70-170 Expiration of scrap metal business license. (1) The scrap metal business license expiration is established by the business licensing service upon department approval of the license. Proration of fees may be necessary to align the scrap metal business license expiration with other licenses held by the business. The license will expire annually after any initial proration process.

(2) Any special license plates issued to a scrap metal business shall expire on the same date as the expiration of the scrap metal business license.

NEW SECTION

WAC 308-70-180 Change of address. A licensee must notify the department within ten days of any change of address of any business location or of the addition of a new location.

NEW SECTION

WAC 308-70-190 Statement of change in business structure, ownership interest, or control. A licensee must, within ten days of any change in its business ownership or structure, file with the department a statement that specifically describes the change that has occurred in its business structure or in its ownership interest.

NEW SECTION

WAC 308-70-200 Change in business structure while licensed. Upon a change of business structure of a licensed scrap metal business, the licensee must apply for a new license and pay original licensing fees under the new entity. Examples of a change of business structure include, but are not limited to, changing from a sole proprietorship to a corporation, a corporation to a limited liability company, or if a partner or partners in a partnership change. The firm may request to keep the previous license number.

NEW SECTION

WAC 308-70-210 Sale, transfer or other disposition of a sole proprietorship license. Upon the sale, transfer or other disposition of a sole proprietorship licensee's scrap metal business:

(1) The purchaser or transferee must file a new application for a license; the fees are the same as for an original application.

(2) The former owner must surrender to the department all special license plates. The new owner or transferee must purchase new plates in the new licensee's name.

NEW SECTION

WAC 308-70-220 Closure of business. Within ten business days of the closure of a scrap metal business, the business must return the license and the special license plates to the department for cancellation.

WSR 13-20-136
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 2, 2013, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-090 on September 19, 2012.

Title of Rule and Other Identifying Information: The title of this project is "Technical WAC amendments and repeal, Round 5 (Changes to commercial fishing rules, reporting rules, and other WACs)" as found on the department's rule-making activity web page. This project involves changes to rules relating to oyster reserve sales and fish receiving tickets.

The following WAC chapter and sections are involved in this rule making: Chapter 220-60 WAC, Oysters and clams—Sales from state reserves, WAC 220-69-210 Definitions, 220-69-230 Description of Washington state nontreaty fish receiving tickets, 220-69-234 Description of treaty Indian fish receiving ticket, 220-69-240 Duties of commercial purchasers and receivers, 220-69-241 Duties of commercial fishers, 220-69-243 Duties of aquatic farmers, 220-69-250 Required information on nontreaty fish receiving tickets, 220-69-254 Required information on treaty Indian fish receiving tickets, 220-69-260 Distribution of copies of nontreaty fish receiving tickets, 220-69-264 Distribution of copies of treaty Indian fish receiving tickets, 220-69-26401 Distribution of copies of shellfish receiving ticket, and 220-69-280 Fish receiving ticket accountability.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 8-9, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after December 6, 2013.

Submit Written Comments to: Joanna Eide, Enforcement Program, 600 Capitol Way North, Olympia, WA 98501, e-mail Joanna.Eide@dfw.wa.gov, fax (360) 902-2155, by October 31, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by October 31, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington department of fish and wildlife's (WDFW) administrative code is in need of updating and consolidation. This proposed rule-making is to streamline, reorganize, and update rules in accordance with the WAC overhaul project currently underway. This rule project updates, clarifies, and streamlines language in oyster reserve sales rules and fish receiving ticket rules, and removes the requirement to submit a hard copy of a fish receiving ticket for those people who submit an electronic PDF of a fish receiving ticket to satisfy quick-reporting requirements for salmon and sturgeon. Changes also implement a treaty Indian shellfish receiving ticket, replacing the use of an outdated form that did not specifically capture shellfish species harvested under a treaty right. The proposed changes include updates to RCW references and penalty language due to statute changes.

Reasons Supporting Proposal: WDFW needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increases in conservation and the availability of resources, clarity for stakeholders and the department, and flexibility for people using electronic means to submit fish tickets for salmon and sturgeon quick-reporting.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.15.045 [77.12.045], and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2403; Implementation: Captain Mike Cenci, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2938; and Enforcement: Chief Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

This proposed rule change involves documentation, record-keeping, and reporting requirements for small businesses engaged in commercial fishing, fish dealing, and fish buying. Required information includes quick reporting information, summary data reporting, and fish receiving tickets. The underlying requirements are mostly unchanged, though the project clarifies language and improves rule structure, and updates references and contact information.

This rule making adds specific provisions for a new treaty Indian shellfish receiving ticket. However, these requirements are not new as the underlying reporting requirements have been in effect for some time; the information was merely reported on a general treaty Indian fish receiving ticket which did not delineate species. The changes to WAC 220-69-234 are to implement a separate treaty Indian shellfish receiving ticket already developed and in use by the fish program. The new treaty Indian shellfish receiving ticket requires the same information, including some additional detail[s] specific to shellfish. The new form should not result in increased workload and time for small businesses as these businesses already had to provide this information. In fact, the new form may make reporting easier on small businesses.

The project also involves reporting information for quick reporting and summary data reporting. Most changes to these provisions are technical, though one specific change will affect small businesses. This change is removing the requirement to mail in a hard copy of a fish receiving ticket to the department if the person chooses to satisfy quick reporting requirements for salmon and sturgeon by electronically sending in the fish receiving ticket in portable document format (PDF).

There are reporting, permit, and contact requirements involved in the rules relating to clam and oyster sales on state reserves, however, changes to these rules are technical and no new provisions or requirements are proposed.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: There are no professional service requirements for a small business to comply with the requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The costs of compliance with the provisions within the proposal may be in employee/owner working time, but any costs will be negligible as the requirements for the treaty Indian shellfish receiving ticket are essentially the same as the requirements that have been in effect for some time. A new, separate form specific to treaty Indian shellfish is proposed instead of having to report the same information on a treaty Indian fish receiving ticket.

Small businesses that take advantage of new electronic reporting requirements for quick reporting and fish receiving ticket submission may actually reduce costs to small businesses. This change actually increases flexibility in reporting requirements and may actually reduce costs for small businesses as they will not have to pay for printing and postage if they choose to send the fish receiving ticket in a PDF to the department. Additionally, there are no software costs associated with taking advantage of this reporting capability since software to make and view PDFs is generally free.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. Compliance with the changes to department requirements in this rule making will not cause businesses to lose sales or revenue. Most of the changes are technical and do not change or increase requirements for small businesses. The changes merely clarify preexisting requirements and correct contact information and references.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

The costs of complying with the proposed changes to the rules in this project will be negligible as most changes are technical and do not increase any preexisting requirements. The change in this rule project regarding allowing PDFs of fish tickets to serve as meeting both the quick-reporting requirements for salmon and sturgeon, and the general submission of the fish ticket to the department increases flexibility and may actually reduce costs of compliance for small businesses.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: Costs are negligible, the requirements already apply to small businesses, and changes to the rule are technical in nature. The department took steps to reduce costs associated with fish ticket reporting for salmon and sturgeon by allowing those who use PDFs of fish receiving tickets to satisfy quick-reporting requirements for salmon and sturgeon to avoid costs of mailing hard copies to the department.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department has received feedback from those who use fish tickets that they are interested in exploring ways to satisfy reporting requirements electronically. The changes to fish receiving ticket rules to allow those who use PDFs of fish receiving tickets to satisfy quick-reporting requirements for salmon and sturgeon is the first step toward more electronic fish receiving ticket reporting. The department is currently exploring future programs to increase electronic reporting for commercial fishing, fish dealing, and fish buying. The department will involve small business stakeholders in developing any plans for additional electronic reporting.

WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to people who notified the department that they are interested in the department's rule-making activities. This notice directs those people to information on how they can participate in the rule-making process and comment on proposed changes.

8. A List of Industries That Will Be Required to Comply with the Rule: Commercial fishers, commercial fish processors, and people engaged in commercial activity involving fish or wildlife must comply with fish receiving reporting requirements. Additionally, small businesses that purchase clams or oysters from state clam and oyster reserves are required to comply with department rules related to those purchases.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2403, fax (360) 902-2155, e-mail Joanna.eide@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

October 2, 2013
Joanna M. Eide
Administrative Regulations Analyst
Acting Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-01-054, filed 12/11/03, effective 1/11/04)

WAC 220-60-010 ((~~Publishing~~)) State oyster reserves sales—Notice ((~~of~~)) for sales over 50 bushels. (1) Sales of oysters ((~~and/~~))or clams from ((~~the~~)) state oyster reserves ((~~of the state~~)) in excess of 50 bushels ((~~shall take place only after~~)) must occur by bid at public auction.

(2) The department must publish notice of ((~~such~~)) sales ((~~has been published~~)) of over 50 bushels of oysters or clams from state oyster reserves in one newspaper of general circulation in the area ((~~in which such~~)) where the state oyster reserves sales ((~~shall~~)) will occur before the oyster reserves sale may take place.

AMENDATORY SECTION (Amending Order 248, filed 3/1/60)

WAC 220-60-040 ((~~Loads to be measured.~~)) State oyster reserves sales—Harvest and measuring loads. ((~~Before each~~)) (1) Oyster harvest from state reserves must occur under the supervision of authorized department personnel. Harvest from state reserves may only occur as specified in writing in the department contract with the harvester.

(2) Purchasers must contact department personnel to measure loads of oysters or clams before leaving a state oyster reserve. It is unlawful for any scow, ((~~or~~)) dredge, or other conveyance((~~,~~)) containing oysters or clams to leave((~~s any~~)) a state oyster reserve((~~, the person in charge of such scow or dredge shall contact the nearest authorized agent of the director for measuring the load. Such load shall not be removed from the reserve without permission of the director or his authorized agent. Invoices will be issued in triplicate, showing the number of bushels and/or pounds in each such load. One copy of such invoice shall be given to the buyer, one copy shall be forwarded to the central office of the department, and the third copy shall be retained by the authorized agent of the director~~)) unless department personnel grants permission to leave the reserve.

(3) A violation of subsection (1) or (2) of this section is a gross misdemeanor under RCW 77.15.560, Commercial fish, shellfish harvest or delivery—Failure to report—Penalty.

AMENDATORY SECTION (Amending Order 1179, filed 11/19/74)

WAC 220-60-050 State oyster reserves sales—Invoices and Payment. ((~~All~~)) (1) The department issues invoices for loads of oysters or clams leaving state reserves in triplicate. Invoices must show the number of bushels or pounds in each load of oysters or clams. The department agent must retain a copy of the invoice, give one copy to the buyer, and forward a copy to the department's central office.

(2) Purchasers of oysters or clams from ((~~any of the~~)) state oyster reserves ((~~shall make remittance~~)) must pay for purchases by bank draft or check payable to the treasurer of the state of Washington((~~, and shall render such~~)). Purchasers must make payments to ((~~the~~)) authorized ((~~agent of the director~~)) department personnel by the Friday of ((~~each~~)) the week following the week ((~~for~~)) invoices ((~~of the previous week~~)) are issued.

AMENDATORY SECTION (Amending Order 248, filed 3/1/60)

WAC 220-60-060 State oyster reserves sales—Oyster growers' associations—Representative. ((~~Any~~)) and organized oyster growers' association may, at ((~~its discretion~~)) the association's expense, appoint a ((~~qualified~~)) representative to be present ((~~at any or all times~~)) during purchases of oysters ((~~and/~~))or clams from state oyster reserves. ((~~Such~~)) The representative ((~~shall~~)) will have access to the department's boat and all records pertaining to ((~~such~~)) those state oyster reserves sales. ((~~Any expenses of such representative shall not be borne by the department of fisheries.~~))

AMENDATORY SECTION (Amending WSR 85-24-045, filed 11/27/85)

WAC 220-60-070 State oyster reserves sales—Purchasers' licenses. ((~~All~~)) (1) It is unlawful for purchasers of oysters or clams from ((~~any of the~~)) state oyster reserves ((~~shall, in advance of the removal of~~)) to remove any oysters ((~~and/~~))or clams from any ((~~such~~)) state oyster reserve((~~, obtain from the department~~)) without first obtaining an oyster reserve license from the department as required by RCW ((~~75.28.290~~)) 77.65.260.

(2) A violation of this section is a gross misdemeanor or class C felony under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 85-24-045, filed 11/27/85)

WAC 220-60-080 State oyster reserves sales—Director may limit use of licenses. ((~~Nothing in this chapter shall prevent the director or his authorized agent from limiting~~)) The department may limit the number of bushels of oysters or pounds of clams ((~~which may be~~)) sold to ((~~any one~~)) an oyster reserve licensee. The department ((~~of fisheries reserves the right to~~)) may also limit the number of dredges operated by ((~~any one~~)) a licensee.

AMENDATORY SECTION (Amending WSR 85-24-045, filed 11/27/85)

WAC 220-60-090 ((~~Director to establish~~)) State oyster reserves sales—Broodstock sale prices. (1) Sale of oysters from the state oyster reserves ((~~for broodstock purposes~~))

to registered oyster farmers for broodstock purposes in amounts of 50 bushels or less may occur at a price established by the director ((~~taking into~~)) that accounts for costs associated with the sale((~~, but in no event may~~)). However, the director's established price cannot be less than the average price paid at the ((~~latest~~)) most recent bid sale.

(2) Sales of oysters for broodstock purposes in amounts over 50 bushels ((~~shall be~~)) must occur by bid at public auction.

AMENDATORY SECTION (Amending WSR 12-04-028, filed 1/26/12, effective 2/26/12)

WAC 220-69-210 Fish receiving ticket definitions. The following definitions apply to this chapter:

(1) "Broker" means a person whose business it is to bring a seller of fish and shellfish and a purchaser of those fish and shellfish together. A broker is not required to have a wholesale fish dealer's license if the fish or shellfish only transit the state of Washington, and no storage, handling, processing, or repackaging occurs within the state.

(2) A broker who takes physical possession of fish or shellfish is an original receiver and ((~~is required to~~)) must complete a fish receiving ticket. A broker acting strictly as an intermediary is not required to complete a fish receiving ticket for fish or shellfish that are delivered to an original receiver in the state of Washington. A broker ((~~is required to~~)) must complete a fish receiving ticket for brokering an interstate or foreign sale from a Washington fisher who is not a holder of a direct retail endorsement, or a sale of fish or shellfish that have entered the state from another state, territory, or country, if the fish or shellfish are placed into interstate or foreign commerce without having been delivered to an original receiver in the state of Washington.

(3) ((~~"Buyer" means a person who receives fish or shellfish and who is required to complete a fish receiving ticket. A wholesale fish dealer or a retail seller who directly receives fish or shellfish from a commercial fisher or receives fish or shellfish in interstate or foreign commerce is acting in the capacity of a buyer and is required to complete a fish receiving ticket. A buyer who is acting as an agent for a wholesale fish dealer is required to have a fish buyer's license.~~

~~(4)~~)) "Department" means((~~:~~)) the Washington Department of Fish and Wildlife, ((~~Information Systems~~)) Fish Program - Commercial Harvest Data Team, 600 Capitol Way North, Olympia, Washington 98501-1091.

(((~~5~~))) (4) "Delivery" means arrival at a place or port and includes arrivals from offshore waters to waters within the state, arrivals ashore from state or offshore waters, and arrivals within the state from interstate or foreign commerce.

(((~~6~~))) (5) "Electronic fish receiving ticket" means the groundfish catch reporting system described in 50 C.F.R. § 660.113 (b)(4)(ii) that is used to submit harvest and fishing information to the department and the National Marine Fisheries Service.

(((~~7~~))) (6) "Fish" means food fish classified under WAC 220-12-010 and game fish taken by treaty fishers and sold commercially.

(7) "Fish buyer" or "buyer" means a person who receives fish or shellfish and who is required to complete a fish receiving ticket. A wholesale fish dealer or a retail seller who directly receives fish or shellfish taken by a commercial fisher, or receives fish or shellfish in interstate or foreign commerce is acting in the capacity of a buyer and is required to complete a fish receiving ticket. A buyer who is acting as an agent for a wholesale fish dealer is required to have a fish buyer's license issued by the department.

(8) "Fish receiving ticket" means a document produced by the department for commercial catch accounting purposes and includes nontreaty fish receiving tickets, such as Puget Sound salmon, troll, marine, utility, and shellfish receiving tickets; treaty Indian fish receiving tickets; and treaty Indian shellfish receiving tickets.

(9) "Fisher" means a ((~~Washington-licensed commercial fisher or holder of a delivery permit~~)) person engaged in commercial fishing activities.

(((~~9~~))) (10) "Fresh" means unprocessed and unfrozen, regardless of whether the fish or shellfish are in the round, cleaned, or packaged for retail sale.

(((~~10~~))) (11) "Frozen" means completely frozen throughout. Flash frozen and surface glaze frozen fish and shellfish are unfrozen fish and shellfish.

(((~~11~~))) (12) "Nontreaty" means all entities not qualified by definition as "treaty."

(((~~12~~))) (13) "Original receiver" or "receiver" means the first person in possession of fish or shellfish in the state of Washington who is acting in the capacity of a buyer. A fisher who is not the holder of a direct retail endorsement and who sells fish or shellfish to anyone other than a dealer, or a fisher who delivers fish or shellfish and places the fish or shellfish into interstate or foreign commerce, is the original receiver of the fish or shellfish. A cold storage facility that holds fish or shellfish for a fisher is not an original receiver, provided that the facility does not process, package, or otherwise handle the fish or shellfish. A person transporting fish or shellfish on behalf of a fisher, and who is in possession of an accurately completed commercial food fish and shellfish transportation ticket, is not an original receiver, provided that the fish or shellfish are transported only to a cold storage facility or to a buyer.

(((~~13~~))) (14) "Processed" means preparing and preserving and requires a wholesale fish dealer's license. Preserving includes treating with heat, including smoking and kippering. Cooked crab is processed. Preserving also includes freezing fish and shellfish.

(((~~14~~))) (15) "Shellfish" means shellfish classified under WAC 220-12-020.

(((~~15~~))) (16) "Treaty" and "treaty Indian," for purposes of fish receiving tickets only, means persons who are members of federally recognized Indian tribes that are entitled to harvest fish or shellfish under the Makah, Medicine Creek, Nez Perce, Point Elliott, Point-No-Point, Quinault, Umatilla and Walla Walla, and Yakima treaties, or persons who are members of federally recognized treaty tribes whose reservations are located within Washington state and who harvest fish or shellfish within their tribe's reservation.

(((~~16~~))) (17) "Wholesale fish dealer" or "dealer" means a person who, acting for commercial purposes, takes possession or ownership of fish or shellfish and sells, barters, or exchanges or attempts to sell, barter, or exchange fish or

shellfish that have been landed into the state of Washington or entered the state of Washington in interstate or foreign commerce. A wholesale fish dealer ((~~is required to~~)) must be licensed. A fisher who is not a holder of a direct retail endorsement and sells fish or shellfish to anyone other than a wholesale fish dealer is required to have a wholesale dealer's license. A retail seller who receives fish or shellfish in interstate or foreign commerce, or from a person who is not a wholesale fish dealer, is required to have a wholesale fish dealer's license.

(((~~17~~))) (18) "Working day" means Monday through Friday, exclusive of a Washington state or federal holiday.

AMENDATORY SECTION (Amending WSR 12-04-028 and 12-05-009, filed 1/26/12 and 2/3/12, effective 2/26/12 and 3/5/12)

WAC 220-69-240 Duties of commercial purchasers and receivers. (1) It is unlawful for any person originally receiving or buying fresh ((~~or~~)), iced ((~~fish or shellfish~~)), or frozen fish or shellfish ((~~that have~~)), whether or not ((~~been~~)) the fish or shellfish was previously delivered in another state, territory, or country, ((~~except purchases or receipts made by individuals or consumers at retail,~~)) to fail to:

(a) Be a licensed wholesale fish dealer or fish buyer; ((~~or~~)) and

(b) Immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. ((~~Each delivery~~))

(i) The original receiver must ((~~be recorded~~)) record each delivery on a separate fish receiving ticket; and

(ii) The original receiver must prepare a fish receiving ticket for purchases of fish or shellfish from fishers who are also fish dealers if the fisher/dealer has not previously completed a fish receiving ticket and provided a copy of the fish receiving ticket or the ticket number as proof.

(2) ((~~This section does~~)) Failure to be licensed under subsection (1) of this section is punishable under RCW 77.15.620. Failure to properly prepare a fish receiving ticket is punishable under RCW 77.15.630.

(3) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. If delivery of the catch takes more than one day, the original receiver must enter the date that the delivery is completed on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the date the vessel leaves the delivery site on the fish receiving ticket.

(4) It is unlawful for any original receiver of shellfish to fail to record all shellfish aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish that are unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for those fish or shellfish.

(5) Any employee of a licensed wholesale dealer who is authorized to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, is authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, and/or licensed wholesale fish dealer the buyers are operating under is responsible for the accuracy and legibility of all documents initiated in its name.

(6) This section does not apply to purchases or receipts made by individuals or consumers at retail.

(7) Subsections (1) through (4) of this section do not apply to persons delivering or receiving fish taken under the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program (50 C.F.R. § 660.140) who are in compliance with the provisions of WAC 220-69-250(5) and who:

(a) Complete electronic fish receiving tickets prior to either processing fish or removing the fish from the delivery site; and

(b) Electronically submit the electronic fish receiving tickets to the National Marine Fisheries Service and the department no later than twenty-four hours after the date the fish are received.

(c) Electronically submit any amendments made to the mandatory information required under WAC 220-69-256 after the initial submission required under (b) of this subsection.

(((~~3~~))) (8) For purposes of this section((~~,~~)):

(a) The term "completed" means that scale weights have been recorded for all delivered fish((~~.~~)); and

(b) The term "submitted" means that all mandatory information required under WAC 220-69-256 has been entered and timelines under subsection (((~~2~~))) (7)(b) of this section have been met.

(((~~4)Failure to be licensed under subsection (1) of this section is punishable under RCW 77.15.620. Failure to properly prepare a fish receiving ticket is punishable under RCW 77.15.630.~~

~~(5) It is unlawful for any person originally receiving fresh or iced fish or shellfish previously delivered in another state, territory, or country, to fail to be a licensed wholesale fish dealer or fish buyer, and to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket for each and every purchase or receipt of such commodities. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.~~

~~(6) It is unlawful for any original receiver of shellfish to fail to record all shellfish aboard the vessel making the delivery to the original receiver. The poundage of any fish or shellfish deemed to be unmarketable, discards, or weigh backs must be shown on the fish receiving ticket and identified as such, but a zero dollar value may be entered for such fish or shellfish. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.~~

~~(7) Any employee of a licensed wholesale dealer who has authorization to receive or purchase fish or shellfish for that dealer on the premises of the primary business address or any of its plant locations as declared on the license application, shall be authorized to initiate and sign fish receiving tickets on behalf of his or her employer. The business, firm, and/or licensed wholesale fish dealer who the buyers are~~

~~operating under shall be responsible for the accuracy and legibility of all such documents initiated in its name.~~

~~(8) It is unlawful for the original receiver to fail to initiate the completion of the fish receiving ticket upon receipt of any portion of a commercial catch. Should the delivery of the catch take more than one day, the date that the delivery is completed must be entered on the fish receiving ticket as the date of delivery. If, for any reason, the delivery vessel leaves the delivery site, the original receiver must immediately enter the current date on the fish receiving ticket. Violation of this subsection is punishable under RCW 77.15.630.~~))

(9) Forage fish:

(a) It is unlawful for any person receiving forage fish to fail to report the forage fish on fish receiving tickets initiated and completed on the day the forage fish are delivered.

(i) Herring ((~~are~~)) must also ((~~required to~~)) be reported on herring harvest logs.

(ii) The harvested amount of forage fish must be entered upon the fish ticket when the forage fish are off-loaded from the catcher vessel.

(iii) An estimate of herring, candlefish, anchovy, or sardine caught but not sold due to mortality must be included on the fish ticket as "loss estimate."

(b) In the coastal sardine fishery, it is unlawful to purchase, per sardine fishery vessel, more than fifteen percent cumulative weight of sardines for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait during the sardine fishery season. Sardines purchased for these purposes must be included, by weight, on the fish ticket as "reduction."

(c) In any forage fish fishery, it is unlawful to purchase anchovy in excess of fifteen percent, by weight, of the total landing weight per vessel, for the purposes of conversion into fish flour, fishmeal, fish scrap, fertilizer, fish oil, or other fishery products. Anchovy purchased for these purposes must be included, by weight, on the fish ticket as "reduction."

(((~~(d) Any violation under this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~))

(10) Geoduck: It is unlawful for any person receiving geoduck, ((~~regardless of~~)) whether or not the receiver holds a license as required under Title 77 RCW, to fail to accurately and legibly complete the fish receiving ticket initiated on the harvest tract immediately upon the actual delivery of geoduck from the harvesting vessel onto the shore. This fish receiving ticket ((~~shall~~)) must accompany the harvested geoduck from the department of natural resources harvest tract to the point of delivery. ((~~Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~))

(11) Puget Sound shrimp - Pot gear:

(a) ((~~It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by pot gear to fail to report to the department the previous week's purchases by 10:00 a.m. the following Monday. For harvest in Crustacean Management Regions 1 or 2, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515. For harvest in Crustacean Management Regions 3, 4, or 6, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408. All reports must specify the serial numbers of the fish receiving tickets on which the previous week's shrimp were sold, plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(b)~~)) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 23A, to fail to record 23A-C, 23A-E, 23A-W, or 23A-S on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((~~Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(c)~~)) (b) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26A, to fail to record either 26A-E or 26A-W on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((~~Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(d)~~)) (c) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Area 26B, to fail to record either 26B-1 or 26B-2 on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((~~Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~

~~(e)~~)) (d) It is unlawful for any person originally receiving or purchasing shrimp, other than ghost shrimp, harvested from Catch Areas 20B, 21A, and 22A, to fail to record 1A-20B, 1A-22A, 1B-20B, 1B-21A, 1B-22A, or 1C-21A on shellfish receiving tickets based on the location of harvest and the boundary definitions specified in WAC 220-52-051. ((~~Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~))

(12) Puget Sound shrimp - Trawl gear:

(a) It is unlawful for the original receiver of shrimp other than ghost shrimp taken from Puget Sound by trawl gear to fail to report to the department the previous day's purchases by 10:00 a.m. the following morning.

(b) ((~~For harvest in Crustacean Management Region 1, reports must be made to the La Conner district office by phone at 360-466-4345, extension 245, or by fax at 360-466-0515.~~)) Reports must be made by fax at 360-796-0108 or by text message or e-mail at shrimpreport@dfw.wa.gov.

(c) ((~~For harvest in Crustacean Management Region 3, reports must be made to the Point Whitney Shellfish Laboratory by phone at 1-360-796-4601, option 1, or by fax at 360-586-8408.~~

~~(d) All reports must specify the serial numbers of the fish receiving tickets on which the previous day's shrimp were sold, the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket.~~

~~(e) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~)) Reports must include, for each fish receiving ticket prepared:

(i) The buyer name, fisher name, and date of sale;

(ii) The fish receiving ticket number, including the first alphanumeric letter;

(iii) The total number of pounds caught per shrimp species; and

(iv) The Marine Fish-Shellfish Management and Catch Reporting Area where the shrimp was harvested.

(13) Puget Sound crab:

(a) It is unlawful for any wholesale dealer acting in the capacity of an original receiver of Dungeness crab taken ((~~by nontreaty fishers,~~)) from Puget Sound((~~,~~)) by nontreaty fishers to fail to report to the department the previous day's purchases by 10:00 a.m. the following business day.

(b) Reports must be made to the Mill Creek Regional Office by fax at 425-338-1066, or by e-mail at crabreport@dfw.wa.gov.

(c) Reports must ((~~be made to the Point Whitney Shellfish Laboratory by fax at 360-586-8408 or by phone at 1-866-859-8439, option 5, and must specify~~)) include:

(i) The ((~~dealer~~)) dealer's name; ((~~dealer~~))

(ii) The dealer's phone number;

(iii) The date of delivery of crab to the original receiver; and

(iv) The total number of pounds of crab caught by nontreaty fishers, by Crab Management Region or by Marine Fish-Shellfish Management and Catch Reporting Area. ((~~Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~))

(14) Salmon and sturgeon:

(a) During any Puget Sound fishery opening that is designated as "quick reporting required," per WAC 220-47-001:

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include:

(A) The dealer or DRE holder name and purchasing location;

(B) The date of purchase;

(C) Each fish receiving ticket number, including ((~~alpha~~)) the first alphanumeric letter, used on the purchasing date; and

(D) The following catch data for each fish ticket used: The total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Puget Sound reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via e-mail at psfishtickets@dfw.wa.gov; or via phone at 1-866-791-1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 C.F.R. Ch. III § 300.93.

(b) During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a DRE holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location; date of purchase; each fish receiving ticket number, including ((~~alpha~~)) the first alphanumeric letter, used on the purchasing date; and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, coastal troll reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-902-2949; via e-mail at trollfishtickets@dfw.wa.gov; or via phone at 1-866-791-1279.

(c) During any Grays Harbor or Willapa Bay fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon made on the previous calendar day, or for a DRE holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location; date of purchase; each fish receiving ticket number, including ((~~alpha~~)) the first alphanumeric letter, used on the purchasing date; and the following catch data for each fish ticket used:

(A) The total number of days fished((~~,~~));

(B) The gear((~~,~~)) used;

(C) The catch area((~~,~~)) fished; and

(D) The species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at ((~~360-664-0689~~)) 360-249-1229; e-mail at harborfishtickets@dfw.wa.gov; or phone at 1-866-791-1280.

(d) During any Columbia River fishery opening that is designated by rule as "quick reporting required":

(i) It is unlawful for any wholesale dealer acting in the capacity of an original receiver to fail to report all purchases of salmon and sturgeon, or for a DRE holder to fail to report all salmon offered, for retail sale.

(ii) The report must include dealer or DRE holder name and purchasing location; date of purchase; each fish receiving ticket number, including ((~~alpha~~)) the first alphanumeric letter, used on the purchasing date; and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species

purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Columbia River reports must be submitted within 5, 8, 12, or 24 hours of closure of the designated fishery.

(A) The department establishes the time frame for submitting reports ((~~will be established by the department~~)) at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery ((~~will~~)) occurs in conjunction with the adoption of ((~~said~~)) the fishery through the Columbia River Compact.

(B) Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777; via e-mail at crfishtickets@dfw.wa.gov; or via phone at 1-866-791-1281.

(e) Faxing or reporting electronically in portable document format (PDF) a copy of each fish receiving ticket used, within the previously indicated time frames specified per area, satisfies the quick reporting requirement.

((~~(f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.~~))

(15)((~~(a)~~)) Sea urchins and sea cucumbers:

(a) It is unlawful for any wholesale dealer acting in the capacity of an original receiver and receiving sea urchins or sea cucumbers from nontreaty fishers to fail to report to the department each day's purchases by 10:00 a.m. the following day.

(i) Wholesale dealers must report by:

(A) Fax at 360-902-2943;

(B) Toll-free telephone at 866-207-8223; or

(C) Text message or e-mail at seaurchinreport@dfw.wa.gov for sea urchins or seacucumberreport@dfw.wa.gov for sea cucumbers.

(ii) For red sea urchins, the report must specify the number of pounds received from each sea urchin district.

(iii) For green sea urchins and sea cucumbers, the report must specify the number of pounds received from each Marine Fish-Shellfish Management and Catch Reporting Area.

(iv) For sea cucumbers, the report must specify whether the landings were "whole-live" or "split-drained." ((~~The report must be made by fax at 360-902-2943, or by toll-free telephone at 866-207-8223.~~))

(b) It is unlawful for the original receiver of red sea urchins to fail to record on the fish receiving ticket the sea urchin district where the red sea urchins were taken((~~,~~)) and ((~~it is unlawful for the original receiver of any sea urchins to fail to record on the fish receiving ticket~~)) the name of the port of landing where the sea urchins were landed ashore.

(c) It is unlawful for the original receiver of sea cucumbers to fail to record on the fish receiving ticket whether the sea cucumbers were delivered "whole-live" or "split-drained."

((~~(d)~~)) (16) A violation of ((~~this subsection~~)) the documentation or reporting requirements in this section is ((~~a gross misdemeanor,~~)) punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 10-02-002, filed 12/23/09, effective 1/23/10)

WAC 220-69-230 Description of Washington state nontreaty fish receiving tickets. (1) ((~~There is hereby created~~)) The department creates, prepares, prints, and distributes upon request the following nontreaty fish receiving ticket forms ((~~to be prepared, printed, and distributed upon request, by the department~~)):

(a) Puget Sound salmon((~~,~~));

(b) Troll((~~,~~));

(c) Marine((~~,~~));

(d) Utility((~~,~~)); and

(e) Shellfish. ((~~These~~))

(2) Fish receiving ticket forms ((~~shall~~)) must contain space for the following information:

(a) Fisherman: The name of the licensed deliverer.

(b) Address: The address of the licensed deliverer.

(c) Boat name: The name or Coast Guard number of the landing vessel.

(d) WDFW boat registration: The Washington department of fish and wildlife boat registration number.

(e) Gear: The code number or name of the specific type of gear used.

(f) Fisherman's signature: The signature of the licensed deliverer.

(g) Date: Date of landing.

(h) Dealer: Name of dealer((~~,~~)) and the department number assigned to dealer.

(i) Buyer: The name of buyer((~~,~~)) and the department number assigned to buyer.

(j) Receiver's signature: The signature of the original receiver.

(k) Number of days fished: Days spent catching fish.

(l) Fish or shellfish caught inside or outside 3-mile limit: Check one box.

(m) Catch area:

(i) The salmon catch area code if salmon are caught.

(ii) The marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.

(n) Tally space for dealer's use: Used at the dealer's discretion.

(o) Species code: The department assigned species code.

(p) Individual number of salmon and sturgeon.

(q) Individual numbers of other fish species((~~,~~)) if ((~~such~~)) fish other than salmon or sturgeon are landed as part of an incidental catch allowance or catch ratio restriction ((~~that is expressed in numbers of fish rather than in pounds~~)).

(r) The number of ghost shrimp in dozens, the number of oysters in dozens or gallons, and the species description for all fish and shellfish.

(s) The original total weight in round pounds of all shellfish or fish, except that pounds of legally dressed fish and shellfish may be recorded in original dressed weight((~~,~~)) so long as dressed fish and shellfish ((~~must be~~)) are designated as dressed on the fish receiving ticket.

(t) Value of fish and shellfish sold or purchased: Summary information for species, or species groups landed.

((~~(t)~~)) (u) All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).

(((~~(u)~~))) (v) Work area for dealer's use: Used at dealer's discretion, ((~~with the following exceptions~~)) except:

(i) Federal sablefish endorsed limited entry permit numbers ((~~must be recorded in this area~~)) for each delivery of sablefish landed under the authority of ((~~this~~)) the permit must be recorded on the fish receiving ticket in the space reserved for dealer's use. Separate fish tickets are required for each permit number ((~~being~~)) used.

(ii) At the time of landing of coastal bottomfish into a Washington port, the fish buyer receiving the fish ((~~is required to~~)) must clearly ((~~mark on the fish receiving ticket in the space reserved for dealer's use~~)) record all legally defined trawl gear aboard the vessel at the time of delivery of the bottomfish on the fish receiving ticket in the space reserved for dealer's use. The ((~~three~~)) 3 trawl gear types are: Midwater trawl, roller trawl, and small foot rope trawl (foot rope less than ((~~eight~~)) 8 inches in diameter). The ((~~notation of the~~)) gear type(s) aboard the vessel ((~~is required prior to the signing of~~)) must be recorded on the fish receiving ticket ((~~by~~)) before the vessel representative signs the fish receiving ticket.

(((~~(v)~~))) (w) Total amount: Total value of landing.

(((~~(w)~~))) (x) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.

(((~~(x)~~))) (y) Crew: The name and signature of crew members who take home fish for personal use.

(((~~(2) The~~))) (3) A Puget Sound salmon fish receiving ticket ((~~shall be used~~)) must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty salmon caught in inland waters((~~.~~)); and

(b) ((~~Any other delivery of nontreaty salmon where the catch may be easily recorded.~~

~~(c)~~)) Any imports of fresh salmon into the state of Washington.

(((~~(3) The~~))) (4) A troll fish receiving ticket ((~~shall be used~~)) must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty coastal salmon and incidental catch((~~.~~));

(b) ((~~Any other nontreaty deliveries where the species delivered may be easily recorded.~~

~~(c)~~)) Any imports of fresh salmon into the state of Washington((~~.~~

~~(d)~~)); and

(c) Any bottomfish or halibut ((~~that are~~)) subject to a catch allowance or ratio restriction, when those species are taken incidental to salmon fishing.

(((~~(4) The~~))) (5) A marine fish receiving ticket ((~~shall be used~~)) must be completely, accurately, and legibly prepared for:

(a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon((~~.~~)); and

(b) Any imports of fresh marine fish or bottomfish.

(((~~(5) The~~))) (6) A marine or utility fish receiving ticket ((~~shall be used~~)) must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate((~~.~~)); and

(b) Any imports of fresh fish or shellfish that do not include salmon.

(((~~(6) The~~))) (7) A shellfish receiving ticket ((~~shall be used~~)) must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries of shellfish((~~.~~));

(b) Any imports of fresh shellfish((~~.~~)); and

(c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

WAC 220-69-234 Description of treaty Indian fish receiving ticket and treaty Indian shellfish receiving ticket. (1) ((~~There is hereby created a~~)) The department creates, prepares, prints, and distributes upon request the following treaty Indian fish receiving ticket forms ((~~to be prepared, printed, and distributed upon request, by the department, which shall~~)):

(a) The treaty Indian fish receiving ticket; and

(b) The treaty Indian shellfish receiving ticket.

(2) Treaty Indian fish receiving ticket forms must contain space for the following information:

(a) ((~~Tribal name~~)) Tribe: Name or identification number of tribe.

(b) ((~~Fisherman~~)) Name: Name ((~~or~~)) and identification number of deliverer or fisher.

(c) Signature: Signature of deliverer ((~~on tribal copy of ticket~~)).

(d) Date: Date of harvest for bivalves (clams, oysters, geoduck), and date of landing for all fish and shellfish.

(e) Dealer: Name of the dealer, and the department number assigned to the dealer.

(f) Buyer: Name of the buyer, and the department number assigned to the buyer.

(g) Gear: Code name or number of the specific gear type used.

(h) ((~~Receiver's~~)) Dealer's signature: Signature of the original receiver.

(i) Catch area:

(i) River name for ((~~river catch,~~)) river-caught species;

(ii) Salmon catch area for ((~~saltwater~~)) saltwater-caught salmon ((~~catch,~~)) species;

(iii) Marine fish/shellfish catch area for ((~~nonsalmon saltwater catch~~)) saltwater-caught nonsalmon species, except bivalve shellfish; or

(iv) The catch area, department of natural resources tract number, or department beach identification number for harvested bivalve shellfish.

(j) ((~~Tally space for dealer's use: Used at dealer's discretion.~~)) The individual number of salmon, steelhead, and sturgeon.

(k) ((~~Individual number of salmon, steelhead, sturgeon,~~)) Species description for all fish and shellfish.

(l) On treaty Indian shellfish receiving tickets only:

(i) The Washington department of health issued certification number (WDOH certification);

(ii) The number of ghost shrimp in dozens((,));

(iii) The number of oysters in dozens or gallons((, species description for all fish and shellfish,)); and

(iv) The number of razor clams.

(m) Species code: The department assigned species code for the species harvested.

(n) The original total weight for each species or species group in round pounds, except:

(i) Pounds of legally dressed fish and shellfish may be recorded in original dressed weight((. Dressed)) so long as the fish and shellfish ((must be)) are designated as dressed((.)); and

(ii) Weight is not required for oysters.

(o) The value of fish and shellfish purchased. ((Summary information for species, or species group landed. All species or categories of bottomfish having a vessel trip limit must be listed separately (see WAC 220-44-050).

(l))) (p) Tribal tax: The amount of tribal tax collected.

(((m))) (q) Take-home ((fish)), ceremonial, subsistence: The species, number, and pounds of fish or shellfish retained for personal, ceremonial, or subsistence use.

(((2))) (r) Tally space for dealer's use: Used at the dealer's discretion.

(3) The treaty Indian fish receiving ticket ((shall)) or treaty Indian shellfish receiving ticket, whichever is applicable, must be ((used)) completed for any deliveries of fish or shellfish caught by Washington treaty Indians.

AMENDATORY SECTION (Amending WSR 12-04-028, filed 1/26/12, effective 2/26/12)

WAC 220-69-250 Required information on nontreaty fish receiving tickets. (1) ((Except as provided in subsection (5) of this section,)) It is unlawful for a person required to complete a nontreaty fish receiving ticket to fail to enter the mandatory information referenced in WAC 220-69-230 (((1))) (2)(a) through (m) and (p) through (((x))) (y) on each nontreaty fish receiving ticket, except as provided in subsection (5) of this section.

(2) A valid license card or duplicate license card issued by the department ((shall be)) used ((in conjunction)) with an approved mechanical imprinter ((in lieu of)) satisfies the requirements in WAC 220-69-230 (((1))) (2)(a) through (e), except as provided in WAC 220-69-273.

(3) A valid dealer or buyer card issued by the department ((shall be)) used ((in conjunction)) with an approved mechanical imprinter ((in lieu of)) satisfies the requirements in WAC 220-69-230 (((1))) (2)(h) and (i).

(4) ((During the period)) December 1 through December 30, the crab inspection certificate number is a required entry on all shellfish receiving tickets documenting landings and sale of Dungeness crab from the Pacific Ocean, Coastal Washington, Grays Harbor, Willapa Harbor, and Columbia River waters. The crab inspection certificate number must be entered legibly ((on the left hand side of the ticket)) in the space indicated for dealer's use.

(5) ((Persons selling or receiving)) A person who sells or receives deliveries of fish made under the Pacific Coast Groundfish Shoreside Individual Fishing Quota (IFQ) Program (50 C.F.R. § 660.140) may use the electronic fish ticket system described in 50 C.F.R. § 660.113 (b)(4)(ii) to enter mandatory information in lieu of completing a nontreaty fish receiving ticket, ((provided that the following conditions are met)) so long as:

(a) All information required under WAC 220-69-256 ((has been)) is entered on the electronic fish receiving ticket;

(b) Both the fisherman and original receiver ((have signed)) sign a legible, printed copy of the original electronic fish receiving ticket, plus all amended copies declaring the document and information contained therein as being true and accurate, and ((they have submitted such)) submit those signed copies as prescribed in WAC 220-69-260; and

(c) A signed copy of the electronic fish receiving ticket and all amended copies are maintained by the original receiver at the original receiver's place of business for ((a period of three)) 3 years ((preceding)) after the date of initiation.

(6) Violation of this section is a gross misdemeanor((,)) or a class C felony punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

WAC 220-69-254 Required information on treaty Indian fish and shellfish receiving tickets. (1) It is unlawful for a person required to complete a treaty Indian fish receiving ticket or a treaty Indian shellfish receiving ticket to fail to enter the mandatory information, when applicable, referenced in WAC 220-69-234 (((1))) (2)(a) through (l) and (((p))) (n) through (q) on each treaty Indian fish receiving ticket or treaty Indian shellfish receiving ticket, whichever is appropriate.

(2) A valid treaty Indian identification card may be used in lieu of WAC 220-69-234 (((1))) (2)(a) and (b).

(3) A valid dealer or buyer card issued by the department ((shall)) may be used in lieu of WAC 220-69-234 (((1))) (2)(e) and (f).

(4) Violation of this section is a gross misdemeanor, punishable under RCW ((77.15.640)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 07-23-001, filed 11/7/07, effective 12/8/07)

WAC 220-69-241 Duties of commercial fishers. (1)(((a) Every fisher selling food)) It is unlawful for a fisher who does not possess a valid wholesale dealer's license or a direct retail endorsement to:

(a) Sell fish or shellfish to a consumer, restaurant, ((boathouse,)) or other retail outlet((, or donating));

(b) Donate fish or shellfish that have not been previously delivered to an original receiver to a nonprofit or other organization((,)); and

((every fisher who places)) (c) Place, or attempt((s)) to place, into ((inter-state)) interstate commerce any ((food)) fish or shellfish previously landed in ((this)) Washington state, or caught or harvested from the territorial waters of ((this)) Washington state((, is required to possess a valid wholesale dealer's license or a direct retail endorsement)).

(((~~(b)~~))) (2) A violation of subsection (1) of this section is punishable under RCW 77.15.620, Engaging in fish dealing activity—Unlicensed—Penalty.

(3) It is unlawful for ((~~such~~)) fishers engaging in activities described in subsection (1) of this section to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket in ((~~their~~)) the fisher's own name for each delivery of fish or shellfish. The fish receiving ticket must show the total of all fish and shellfish aboard the harvesting vessel upon delivery. A violation of this subsection is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

(((~~(c)~~))) (4) It is unlawful for a fisher selling at retail to fail to complete ((~~a~~)) the appropriate fish receiving ticket before offering fish or shellfish for retail sale, except ((~~that the~~)) a fisher may complete a fish receiving ticket with an estimated number or weight if ((~~food~~)) the fisher offers the fish or shellfish ((~~are being offered~~)) for sale directly off the catcher vessel. ((~~At the completion of~~)) After the retail activity is completed, the fisher who ((~~has~~)) completed a fish receiving ticket with an estimated number or weight of fish or shellfish is required to complete a corrected fish receiving ticket with the actual number and weight of fish or shellfish ((~~that were~~)) sold at retail. (((~~(d) Failure to be licensed under this subsection is punishable under RCW 77.15.620.~~

~~(e) Failure to prepare a fish receiving ticket under~~)) A violation of this subsection is punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

(((~~(2)(a)~~))) (5) It is unlawful for a fisher offering ((~~food~~)) fish or shellfish for retail sale to fail to maintain a sequentially numbered receipt book((~~, which receipt book shall contain a receipt duplicate copy and shall~~)). The fisher must give each purchaser of ((~~salmon or crab~~)) fish or shellfish a receipt showing the number, weight, and value of ((~~food~~)) fish or shellfish sold to that purchaser. The receipt book must contain a duplicate copy of the receipt given to the purchaser that remains with the receipt book.

(((~~(b) It is unlawful for the retail seller to fail to~~)) The fisher must retain the duplicate receipts for one year.

(((~~(c)~~))) A violation of this subsection is ((~~a gross misdemeanor,~~)) punishable under RCW ((~~77.15.640~~)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

(((~~(3)~~))) (6)(a) In the commercial geoduck fishery, it is unlawful for a vessel operator ((~~so~~)) designated by the geoduck tract holder to fail to be present at all times on each vessel commercially harvesting geoducks or having commercially harvested geoducks aboard.

(b) For each day's harvest of geoducks from each tract, it is unlawful for the designated operator to fail to completely, legibly and accurately enter the following information on a fish receiving ticket before leaving the department of natural resources geoduck harvest tract:

(i) Enter in the "dealer's use" column the number of cages of geoducks harvested((~~.~~));

(ii) Write ((~~across the top of the fish receiving ticket, directly below the tear strip,~~)) the harvest vessel name, its Washington department of fish and wildlife identification number, and the date((~~.~~)) across the top of the fish receiving ticket directly below the tear strip; and

(iii) Sign the fish receiving ticket as the fisher.

(((~~(c)~~))) (7) A violation of ((~~this~~)) subsection (6) of this section is ((~~a gross misdemeanor,~~)) punishable under RCW ((~~77.15.640~~)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

(((~~(4)~~))) (8)(a) It ((~~shall be~~)) is unlawful for operators of commercial fishing vessels catching ((~~their own~~)) forage fish for the purposes of using them as bait((~~,~~)) to fail to accurately report ((~~such~~)) those harvests on a state of Washington fish receiving ticket along with the target ((~~food~~)) fish or shellfish when ((~~such food~~)) those fish or shellfish are delivered to an original receiver.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(((~~(5)~~))) (9)(a) It ((~~shall be~~)) is unlawful for an operator((~~s~~)) of a commercial fishing vessel((~~s~~)) to allow((~~, for monetary consideration,~~)) the distribution or transfer of forage fish for monetary consideration from ((~~their~~)) the nets or other holding devices under ((~~their~~)) his or her control to anyone other than a licensed wholesale fish dealer((~~,~~)) unless the operator((~~s~~)) of the commercial fishing vessel((~~s hold~~));

(i) Possesses a wholesale fish dealers license((~~. Fishermen who are also licensed wholesale fish dealers and who distribute or transfer forage fish to others for use as bait in other commercial fisheries will be responsible for completing~~)); and

(ii) Completes a fish receiving ticket for ((~~such~~)) those transfers.

(b) A violation of this subsection is ((~~a gross misdemeanor,~~)) punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-096, filed 8/17/04, effective 9/17/04)

WAC 220-69-243 Duties of aquatic farmers. (1) It is unlawful for an aquatic farmer shipping out-of-state or selling private sector cultured aquatic products to fail to:

(a) Keep complete and accurate records showing the quantity of ((~~these~~)) products sold and the location of the aquatic farm where ((~~they~~)) products were grown((~~, and to fail to~~)); and

(b) Completely, accurately, and legibly prepare an aquatic farm production report.

(2) An aquatic farm production report ((~~shall~~)) must document each aquatic farm's monthly production((~~, showing~~)) and contain the information required in WAC 220-69-23402 (1)(((~~(d)~~))) (a) through (g)((~~, and shall be mailed~~)). Aquatic farmers must submit aquatic farm production reports for each quarter to the department within thirty days of the end of each quarter for which production is reported.

(((~~(2)~~))) (3) The aquatic farmer must retain copies of quarterly production reports ((~~copies are required to be maintained by the aquatic farmer~~)) for one year and ((~~presented on demand~~)) make the reports available for inspection upon request by authorized department personnel.

(((~~(3)~~))) (4) Violation of this section is a misdemeanor, punishable under RCW 77.15.350, Inspection and disease control of aquatic farms—Rules violation—Penalty.

AMENDATORY SECTION (Amending WSR 12-04-028, filed 1/26/12, effective 2/26/12)

WAC 220-69-260 Distribution of copies of nontreaty fish receiving tickets. (1) State of Washington nontreaty fish receiving tickets ((~~shall~~)) must be made out in quadruplicate (four copies) at the time of delivery of fish or shellfish. ((~~Upon completion of the fish receiving ticket,~~)) It is unlawful for the original receiver who completes a fish receiving ticket to fail to distribute the copies as follows:

(a) Except for original receivers who submit a fish receiving ticket in portable document format (PDF) to satisfy quick reporting requirements for salmon and sturgeon under WAC 220-69-240 (14)(e), the ((~~person completing the fish receiving ticket to fail to distribute the copies as follows:~~

~~(a) The dealer copies (white and yellow) shall be retained by the receiver for his or her use.~~

~~(b)~~)) original receiver must mail the state copy (green) ((~~shall be mailed~~)) of the fish receiving ticket to the department of fish and wildlife (department). ((~~It is required that~~)) The department must receive the state ((~~copies be received by the department~~)) copy no later than the sixth working day after the day ((~~the ticket was completed by~~)) the original receiver completes the fish ticket.

(b) The original receiver must retain the dealer copies (white and yellow) of the fish receiving ticket for his or her records.

(c) The deliverer must retain the fisher copy (gold) ((~~shall be retained by the deliverer~~)) for his or her ((~~use~~)) records.

(2) It is unlawful for an original receiver ((~~to fail to comply with the following provisions:~~

~~(a) signed copy of all electronic fish receiving ticket submissions must be mailed to the department.~~

~~(b) The electronic fish receiving tickets must be received by the department no later than the sixth working day after the ticket was completed or amended by the original receiver~~)) who submits an electronic fish receiving ticket to fail to retain a signed copy of the electronic fish receiving ticket for three years.

(3) A violation of this section is ((~~a gross misdemeanor,~~)) punishable under RCW 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 04-17-096, filed 8/17/04, effective 9/17/04)

WAC 220-69-264 Distribution of copies of treaty Indian fish receiving tickets. (1) State of Washington treaty Indian fish receiving tickets ((~~shall~~)) must be made out in quintuplicate (five copies) at the time of landing. ((~~Upon completion of the treaty Indian fish receiving ticket,~~)) It is unlawful for the ((~~person completing~~)) original receiver who completes the fish receiving ticket to fail to distribute the copies as follows:

(((~~1) The dealer copy (white) shall be retained by receiver for their use.~~

~~(2)~~)) (a) The original receiver must mail the state copy (green) and the NWIFC copy (pink) ((~~shall be mailed~~)) to the Northwest Indian Fisheries Commission (NWIFC), P.O. Box 5247, Lacey, Washington 98509. ((~~It is required that~~)) The NWIFC must receive the state copy and ((~~game~~)) NWIFC copy ((~~be received by the Northwest Indian Fisheries Commission~~)) no later than the sixth working day after the day ((~~the ticket was completed by~~)) the original receiver((~~.~~

~~(3)~~)) completes the fish ticket;

(b) The original receiver must mail the tribal copy (yellow) ((~~shall be mailed~~)) with the state and NWIFC copies to the Northwest Indian Fisheries Commission, P.O. Box 5247, Lacey, Washington 98509((~~: Provided, That upon~~)). However, if the department has a written agreement ((~~received by the department~~)) from a specific tribe and buyer indicating the desire to transmit the tribe's copy directly to the fisher's tribe, then that one copy may be ((~~so disposed.~~)) sent directly to the fisher's tribe;

(c) The original receiver must retain the dealer copy (white) for his or her records; and

(((~~4~~))) (d) The ((~~fisherman~~)) deliverer must retain the fisher's copy (gold) ((~~shall be retained by the deliverer~~)) for ((~~their use~~)) his or her records.

(((~~5~~))) (2) A violation of this section is ((~~a gross misdemeanor,~~)) punishable under RCW ((~~77.15.640~~)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 08-21-023, filed 10/6/08, effective 11/6/08)

WAC 220-69-26401 Distribution of copies of shellfish receiving ticket. (1) State of Washington shellfish receiving tickets must be made out in quintuplicate (five copies) at the time of delivery of shellfish. ((~~Upon completing these tickets,~~)) It is unlawful for the ((~~fish~~)) original receiver ((~~must~~)) to fail to distribute the fish receiving ticket copies as follows:

(((~~(1) The dealer copies (white and yellow) stay with the receiver for his or her records.~~

~~(2)~~)) (a)(i) For shellfish other than geoduck clams from department of natural resources (DNR) geoduck tracts, the original receiver must mail the state copies (green and pink) ((~~must be mailed~~)) to the department of fish and wildlife (department). The department must receive ((~~these~~)) the state copies no later than the sixth working day after the day the original receiver ((~~completed~~)) completes the ticket.

(((~~(b)~~))) (ii) For geoduck clams from ((~~department of natural resources geoduck~~)) DNR tracts, the original receiver must mail one state copy (green) ((~~must be mailed~~)) to the department ((~~of fish and wildlife~~)). The department must receive its copy no later than the sixth working day after the day the original receiver ((~~completed~~)) completes the ticket. The original receiver must give the other state copy (pink) ((~~must be given~~)) to ((~~the department of natural resources~~)) DNR at the time of weigh-out, unless otherwise directed by ((~~the department of natural resources~~)) DNR.

(b) The original receiver must retain the dealer copies (white and yellow) for his or her records.

(((~~3~~))) (c) The ((~~fisherman's~~)) deliverer must retain the fisher's copy (gold) ((~~must be retained by the deliverer~~)) for his or her ((~~use~~)) records.

(((~~4) It is unlawful for a fish receiver to fail to distribute fish receiving tickets as directed above.~~)) (2) A violation of this section is ((~~a gross misdemeanor,~~)) punishable under

RCW ((~~77.15.640~~)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

WAC 220-69-280 Fish receiving ticket accountability. (1) Only current state of Washington fish receiving tickets ((~~shall~~)) may be used((~~, and shall be subject to the following orders:~~

(~~1~~))).

(2) Official state of Washington fish receiving tickets may be ordered free of charge from the department.

(((~~2~~))) (3) It is unlawful:

(a) To fail to use fish receiving ticket books and fish receiving tickets in numerical sequence, starting with the lowest numbered ticket issued to the original receiver((~~.~~

~~(3) It is unlawful~~));

(b) To transfer fish receiving tickets or ticket books from one original receiver to another original receiver without written permission from the department((~~.~~

~~(4) It is unlawful~~));

(c) For any purchaser or receiver terminating business to fail to notify the department in writing and to fail to return all unused fish receiving tickets and ticket books to the department within thirty days after termination of business((~~.~~

~~(5) It is unlawful~~));

(d) To fail to return the state copy of all fish receiving tickets to the state. All fish receiving tickets that are incorrectly made out, voided, or otherwise unused, ((~~are required to~~)) must be submitted to the department accompanying, and in sequence with, other fish receiving tickets((~~.~~

~~(6) It is unlawful~~));

(e) To fail to account for all ((~~fish receiving tickets that are~~)) lost, destroyed, or otherwise missing fish receiving tickets in writing to the department((~~.~~

~~(7) It is unlawful~~));

(f) To transfer fish receiving tickets to anyone who is not a licensed wholesale fish dealer, licensed fish buyer, or holder of a direct retail sale license endorsement((~~, and it is unlawful for~~));

(g) For any person who is not ((~~so~~)) a licensed wholesale fish dealer, licensed fish buyer, or holder of a direct retail sale license endorsement to have fish receiving tickets in his or her possession((~~.~~

~~(8) It is unlawful~~)); and

(h) For a wholesale dealer or holder of a direct retail sale endorsement to fail to maintain the dealer copy or copies of a completed fish receiving ticket at the dealer's or holder's regular place of business for three years after the date of use of the fish ticket.

(((~~9~~))) (4) A violation of this section is ((~~a gross misdemeanor,~~)) punishable under RCW ((~~77.15.640~~)) 77.15.630, Unlawful fish and shellfish catch accounting—Penalty.

WSR 13-20-137
PROPOSED RULES
NOXIOUS WEED CONTROL BOARD
[Filed October 2, 2013, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-021.

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The board is proposing to amend the state noxious weed list for 2014. Specifically, the board is considering: The addition of two Class B noxious weeds and two Class C noxious weeds; reinstatement of modified listing language for a current noxious weed; reclassification of two Class A noxious weeds and the reclassification of eleven hawkweed listings; reinsertion of a listing exemption of a Class B noxious weed; modifications to designations of twelve Class B noxious weeds.

Hearing Location(s): The Confluence Technology Center, 285 Technology Center Way, Wenatchee, WA 98801, on November 5, 2013, at 1:00-3:00 p.m.

Date of Intended Adoption: December 28, 2013.

Submit Written Comments to: Alison Halpern, Washington State Noxious Weed Control Board (WSNWCB), P.O. Box 42560, Olympia, WA 98504-2560, e-mail ahalpern @agr.wa.gov or noxiousweeds@agr.wa.gov, fax (360) 902-2094, by November 4, 2013.

Assistance for Persons with Disabilities: Contact Wendy DesCamp by October 31, 2013, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed control efforts for county noxious weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal makes several amendments to WAC 16-750-005 through 16-750-015.

Reasons Supporting Proposal: WSNWCB is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Statute Being Implemented: Chapter 17.10 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSNWCB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Alison Halpern, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose more than a minor cost on businesses in an industry. An analysis of the direct economic effects of the proposed rule amendments indicates that costs to small businesses would be negligible or none at all. A copy of the analysis is shown below, and it can be obtained by contacting Alison Halpern, WSNWCB, P.O. Box 42560, Olympia, WA 98504-2560.

AN ANALYSIS TO DETERMINE IF AN SBEIS IS REQUIRED FOR WSNWCB PROPOSALS TO CHANGE THE NOXIOUS WEED LIST (RCW 17.10.080)

Rule Summary: RCW 17.10.080 authorizes WSNWCB to adopt a state noxious weed list annually to make changes as deemed necessary and helpful in reducing the threat and impact of noxious weeds in the state. These annual changes to the weed list are based primarily on proposals received by the WSNWCB, and they are voted on in November following a public hearing. Possible changes to the weed list include but are not limited to: The addition of new species; deletion of species that have been eradicated or found to be less detrimental than originally predicted; changes in Class B areas designated for control; and the change of noxious weed class of a species.

The current proposed changes to the 2014 noxious weed list include:

- Adding lesser celandine, Ficaria verna, as a Class B noxious weed to be designated in Snohomish, Skamania, Stevens, and Pend Oreille counties.
- Adding giant reed, Arundo donax, as a Class B noxious weed with statewide designations intended to protect habitat susceptible to potential invasion of this species without impacting its responsible commercial cultivation.
- Adding the group of nonnative cattail species and hybrids, including but not limited to *Typha angustifolia, T. domingensis, T. minimum,* and *T.*x *glauca* as a Class C noxious weed.
- Adding Russian olive, *Elaeagnus angustifolia,* as a Class C noxious weed.
- Reinstating 2012 listing language of Japanese eelgrass (Class C on commercially managed shellfish beds only).
- Reclassifying velvetleaf, Abuliton theophrasti, from a Class A noxious weed to a Class B noxious weed to be designated everywhere except Yakima and Franklin counties.
- Reclassifying buffalobur, Solanum rostratum, from a Class A noxious weed to a Class C noxious weed.
- Reclassifying yellow-flowered nonnative hawkweeds *(Hieracium)* from Class A, B, and C noxious weed species to two Class B listings by Subgenera Meadow *(Pilosella)* and Wall *(Hieracium)*.
- Reinsert exemption "with the exception of bulbing fennel, *F. vulgare* var. *azoricum"* to Class B common fennel listing (unintentionally omitted from chapter 16-750 WAC in 2013).
- Adjusting designations of twelve Class B noxious weeds.

Purpose of this Analysis: RCW 19.85.030 requires agencies to prepare an SBEIS if the proposed rule will impose more than minor costs on businesses in an industry. The purpose of this analysis is to determine if the proposed changes to the 2014 noxious weed list will impose "more than minor costs" on the businesses directly affected by these proposed changes, which would thereby require WSNWCB to prepare a formal SBEIS.

Nature of aforementioned noxious weed species in Washington:

Proposed additions of Class B noxious weeds: Lesser celandine *(Ficaria verna,* also known as *Ranunculus ficaria)* is a small, low-growing plant of moist areas. Emerging early in the growing season, often before native ephemerals, it can form dense patches that outcompete native plants. Its vegetative reproduction through bulbets and tubers makes it very difficult to control once established. Lesser celandine has been proposed as a Class B noxious weed, which would be designated for control in Snohomish, Skamania, Stevens, and Pend Oreille counties.

Giant reed *(Arundo donax)* is a bamboo-like grass considered highly invasive in many southern states, where it can rapidly colonize and form massive, monotypic stands in riparian (river bank) habitat. However, there is a great deal of interest in this fast-growing plant as a biofuel, and as a sustainable substitute for tree-based paper, flooring and other construction building material, and as reeds for wind instruments. The WSNWCB is considering listing it as a Class B noxious weed, to be designated for control in areas susceptible to invasion such as rivers, wetlands, and open irrigation waterways. The intent is to support the careful and responsible cultivation of this potential crop while being prepared to control it should it escape into these aquatic systems.

Proposed addition of Class C noxious weeds: The WSNWCB is considering grouping all nonnative cattails (*Typha* species) and their hybrids into one Class C listing. These nonnative wetland plants are considered invasive because they can dominate marshes more aggressively and tolerate deeper water and more flooding than our native cattail (*Typha latifolia)*. Because the nonnative cattails and their hybrids look similar to each other, and our native cattail is more easily distinguishable, it is simpler to group the nonnatives together as one noxious weed listing. As a Class C noxious weed, control would not be required by the WSNWCB, though county weed boards may require landowners to control it where it is becoming problematic.

Russian olive *(Elaeagnus angustifolia)* is common in Eastern Washington and is regarded by many as a nasty tree with thorny branches. Sometimes sold as an ornamental and for use as wind breaks, Russian olive is quite invasive, particularly in riparian habitats, and literally a real pain to work around and/or control. It has been proposed as a Class C noxious weed for 2014, which means that control would not be required by the WSNWCB, though county weed boards may require landowners to control it where it is becoming problematic.

Proposed reinstatement of modified listing language of an existing noxious weed: Japanese eel grass *(Zostera japonica)* has returned for a third year of deliberation, as it still poses a complicated dilemma in Washington. Shellfish growers are concerned because this nonnative species of the intertidal zone is invading once-bare mudflats and significantly reducing yield of shellfish and increasing costs to manage shellfish beds, especially in Willapa Bay. Many natural resource managers and researchers agree that Japanese eel grass is nonnative, invasive, and expanding its range. However, some research indicates that the nonnative species may provide similar functional value as our native, protected eel-

grass *(Zostera marina)* in unmanaged tidelands and serves as a food source for several waterfowl species. The WSNWCB had listed Japanese eelgrass as a Class C noxious weed on commercially managed shellfish beds only in 2012 and then adopted a proposal to remove the modification and list it as a Class C noxious weed. For 2014, the WSNWCB is considering a proposal to reinstate the original listing language of 2012.

Proposed reclassifications of existing noxious weeds: Velvetleaf *(Abuliton theophrasti)* aggressively competes with cultivated crops such as corn and alfalfa, and its allelopathic seed and leaves can inhibit germination and growth of desirable vegetation. Seed can remain viable in the soil for over fifty years, making eradication a difficult goal where populations are well-established. Reclassifying it as a Class B noxious weed and designating it everywhere it [in] Washington, except in the two counties with established populations, will keep this species contained in those counties where control, rather than eradication is a more reasonable goal.

Buffalobur is a noxious weed arms [armed] with spines. It is a common contaminant of bird seed and garden seeds and typically established beneath bird feeders and in gardens. Although it is considered an aggressive weed in its native range, it does not appear [to] establish as readily as initially thought. Reclassifying buffalobur as a Class C noxious weed means that control would not be required by the WSNWCB, though county weed boards may require landowners to control it where it may be problematic.

Invasive, nonnative hawkweeds spread rapidly in pastures and rangelands, displacing native forbs and grasses that livestock and wildlife rely on for food. Yellow-flowered hawkweed species can be hard to tell apart and identify down to species; moreover, some invasive hawkweed species can create hybrids. Rather than eleven noxious weed listings (ten species, one general listing for all other nonnative hawkweeds), the hawkweeds will be listed by subgenus, which are easier to tell apart. Grouping the nonnative hawkweeds at the subgenus level will help mitigate against potential confusion between species and/or hybrids, and to make the hawkweed listings and control requirements simpler and easier to understand. The state and county weed boards still have the option to educate and enforce at the species level if desired. Both subgenus listings would be as Class B noxious weeds, with designations based on the distribution and designations of the currently listed hawkweed species.

Nonnative hawkweeds and hybrids of the Meadow Subgenus *(Pilosella),* including but not limited to:		Nonnative hawkweeds and hybrids of the Wall Subgenus *Hieracium,* including but not limited to:	
mouseear *(Hieraciumpilosella),*	pale *(H. lactucella)*	common *(Hieraciumlachenalii)*	European *(H. sabaudum)*
queen-devil *(H. glomeratum)*	tall *(H. piloselloides),*	polar *(H. atratum)*	smooth *(H. laevigatum)*
whiplash *(H. fagellare)*	yellow *(H. caespitosum)*	spotted *(H. maculatum)*	wall *(H. lactucella)*
yellow-devil *(H. x floribundum)*			

Proposed reinsertion of Class C noxious weed exemption: In 2013, the language exempting a noninvasive variety of common fennel *(Foeniculum vulgare)* was inadvertently omitted from chapter 16-750 WAC. This language, exempting the bulbing variety of fennel (var. *azoricum)* from the Class B noxious weed common fennel would be reinserted back into the WAC.

Proposed modifications of current Class B designations: The designations of eleven Class B noxious weeds will be adjusted to better match existing distribution of those species in seven counties. Namely:

- Undesignate wild chervil in Island County.
- Designate yellow archangel in Island County.
- Undesignate spurge laurel in Pierce and Jefferson counties.
- Undesignate myrtle spurge in Clallam and Jefferson counties.
- Modifying Eurasian milfoil designation to include Pend Oreille County in all lakes with public boat launches except Fan Lake.
- Designate hairy willow herb in Pend Oreille County.
- Designate meadow knapweed in Pend Oreille County.
- Designate Bohemian knotweed in Pend Oreille County.
- Designate policeman's helmet in Pend Oreille County.
- Designate plumeless thistle in Pend Oreille County.
- Modify yellow starthistle designation in Stevens County to read: Stevens county except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road."

Affected Groups and the Cost of Compliance:

The horticultural industry: The horticultural industry is the group of businesses most likely to be indirectly impacted by the proposed listings of lesser celandine, giant reed, nonnative cattails, Russian olive, and the inclusion of additional nonnative hawkweeds (such as spotted) in the subgenus listings. However, it is unlikely that these listings will cause these businesses to lose sales, revenue, or jobs. The noxious weed list is separate from the WSDA quarantine lists (WAC 16-752-300, 16-752-400, 16-752-500, 16-752-600), which prohibit the sale and transport of particular species, thus these potential noxious weed listings would not directly prohibit the sales of this [these] plants. Nurseries selling these nonnative, invasive species could potentially experience a decrease in sales of these plants by consumers who voluntarily choose not to purchase ornamental species that are listed noxious weeds. To help assess the magnitude of this indirect economic impact, the state weed board developed a survey through SurveyMonkey (https://www.surveymonkey.com/s/6DLMYYY).

A printed survey of the proposed listings for lesser celandine, nonnative cattails, giant reed, and Russian olive, along with self-addressed stamped envelopes (SASE) was mailed

to fifty WSDA-licensed nurseries on August 5, 2013. The sampling strategy employed was a systematic, random design so that at least one nursery per county was included in the survey, with King County weighted more heavily based on demographics. A second printed survey with information about the proposed reclassification of nonnative hawkweed species was sent, again with an SASE to those nurseries who responded to the main survey. A summary of the proposed changes to the 2014 noxious weed list and link to the online survey was included in the Washington Nursery and Landscape Association (WSNLA) e-newsletter that was distributed to its members on August 14, 2013. We received a total of three online responses between August 14 and September 19. A total of twenty-five full surveys were mailed back, along with fourteen supplemental surveys about the proposed hawkweed reclassification. Of twenty-eight total responding nurseries, only one was not considered a small business, as it was a nonprofit garden. Nurseries participating in the surveys came from sixteen different counties. Three respondents chose to keep the name of their company and county of operation anonymous. Based on these results, none of the twenty-eight nurseries carry lesser celandine or giant reed. Two nurseries carry nonnative cattail species. One participant indicated that nonnative cattails were carried at the nursery but noted that the economic impact would be "miniscule - less than $100. I wouldn't stock it if it were a listed plant." The other estimated an economic loss of $50. Two other nurseries - both in Kittitas County - indicated that they carried Russian olive. One indicated that the proposed listing would not have an economic impact; the other estimated a loss of $500-750. However, since the participant wished to remain anonymous, it was not possible to follow up for clarification. None of the seventeen nurseries that responded to the hawkweed reclassification survey carry nonnative hawkweeds.

The WSNWCB has worked over the years to improve its relationship with the nursery industry. A member of the WSNLA has been appointed to the state weed board's noxious weed committee for many years to represent the horticultural industry, and the state weed board has had a representative on the WSNLA's invasive plant task force since 2004. The cooperative efforts culminated in the creation of the publication GardenWise: Non-invasive Plants for Your Garden. This collaboration between the horticultural industry, state and county government, NGO's, and an institution of higher learning resulted in a publication that educates the consumer about invasive plants and promotes the sales of noninvasive alternatives, and it has been applauded by gardeners, nurseries, and noxious weed control programs alike. Twenty-seven of the twenty-eight nurseries responded to the question asking whether these efforts were beneficial to their businesses, overall, twenty respondents (seventy-four percent) indicated that efforts by the WSNWCB to promote noninvasive alternatives to invasive ornamental species were helpful to their businesses. Two respondents (seven percent) were not sure if these efforts were helpful to the nursery business, and another five respondents (nineteen percent) indicated that the WSNWCB efforts were not helpful.

The giant reed industry: To the best of our knowledge, there are two companies directly involved in the commercial cultivation of giant reed for biomass, fiber production, and other uses. An online survey was created and distributed to both companies on August 14, 2013, using contact information provided on their web sites. One company did not respond; the other filled out the survey on August 30, and noted that the proposed listing would cost "100's of millions of dollars to our company but untold amounts in the impact on the environment, local economies and dependency on energy." Subsequent communication with this company, along with a tour of one of their giant reed plantings in Washington have indicated that their protocol is not to plant this species in any of the proposed designated areas for control; therefore, there would not be any direct economic impact to the company because of the proposed Class B listing.

The shellfish industry: The large majority of small businesses with Japanese eel grass on their property are commercial shellfish growers. A small business economic impact survey of the shellfish growers was conducted in 2011, when the addition of Japanese eel grass as a Class C noxious weed on commercially managed shellfish beds only was first considered. It was concluded that this modified listing would not cause these businesses to directly lose sales or revenue, nor will the listing itself directly result in the accrual of more than minor costs to the businesses, since control would not be mandated by the WSNWCB. It should be noted that the nominations to add Japanese eelgrass as a Class C noxious weed for 2012 came from several commercial shellfish growers, and shellfish growers overwhelmingly supported the 2013 listing, which removed the modification. The original proposal for 2012 (and then 2013) was to add this species as a Class C noxious weed. The WSNWCB modified the proposed Class C listing for 2012 to its noxious weed status to commercially managed shellfish beds only, since there were other stakeholders who felt that this species provided beneficial functions in unmanaged tidelands. Many shellfish growers had expressed - and continue to express - serious concern about this species and that they wanted to voluntarily control Japanese eelgrass on their tidelands. A few shellfish growers also have expressed concern about the public perception of having a listed noxious weed on their shellfish beds and the possible use of chemicals to control it. It should be noted that the WSNWCB supports integrated plant management (IPM) and does not mandate the use of specific control options. Moreover, there is currently no herbicide labeled for use in Washington to control Japanese eelgrass, although ECY is working with stakeholders on a draft NPDES permit for the chemical imazamox. To summarize the survey results described in the 2011 document entitled "WSNWCB SBEIS analysis 2012":

- Fifty percent of respondents (eleven of twenty-two) currently have Japanese eelgrass on their shellfish beds; forty-one percent of respondents (nine of twenty-two) do not have Japanese eelgrass on their shellfish beds, and about nine percent of respondents (two of twenty-two) were not sure if they have Japanese eelgrass on their shellfish beds.
- About seventy-three percent of respondents (sixteen of twenty-two) indicated that the potential Class C listing of Japanese eelgrass on commercially managed shellfish beds would *not* cause their business to lose sales or revenue. Eighteen percent of respondents (four of twenty-

two) were not sure if the listing would cause their business to lose sales or revenue. Nine percent (two respondents) indicated that the listing would likely cause them to lose sales or revenue.

- Twenty-seven percent of respondents (six of twenty-two) indicated they anticipated controlling Japanese eelgrass, whether or not it is listed as a noxious weed, about thirty-two percent of respondents (seven of twenty-two) indicated they would not control Japanese eelgrass, and about forty-one percent of respondents (nine of twenty-two) were not sure at this time.
- About fifty-five percent of respondents (twelve of twenty-two) anticipated some benefits to listing Japanese eelgrass as a Class C noxious weed on commercially managed shellfish beds, about fourteen percent of participants (three of twenty-two) do not anticipate benefits to the listing, and the remaining thirty-one percent of respondents (seven of twenty-two) are not sure if there are benefits to the proposed listing.

There are likely a few small businesses outside of the commercial shellfish industry that have Japanese eelgrass on their property, such as marinas. There is at least one hotel that might have this species on its property, but it was included in the 2011 survey since it also commercially raises shellfish on the property. However, control of Japanese eelgrass would not be required by the WSNWCB, and so far no county noxious weed control board has selected this species for mandatory control. More important, the proposed reinstatement of 2012's listing would only recognize Japanese eelgrass as a Class C noxious weed on commercially managed shellfish beds only, which means that only commercially managed shellfish operations would be required to control Japanese eelgrass, should a county weed board select this species for control.

The WSNWCB held a meeting in February, 2012, with stakeholders - including representatives from the shellfish industry, state agencies, NGO's, and concerned citizens - to further discuss issues about Japanese eelgrass, after it had been listed as a Class C noxious weed on commercially managed shellfish beds only for the 2012 weed list. The state weed board was also participatory in the June 18-19, 2013, workshop to discuss policy and science of Japanese eelgrass, held by ECY. The WSNWCB also scheduled small, informal tours of Japanese eelgrass on tideland that had been commercially managed for clams in Willapa Bay before the nonnative eel grass made clam production unfeasible, and of Japanese eelgrass in unmanaged tidelands in Puget Sound. The complicated matter of Japanese eelgrass will likely continue to generate more discussions.

Nonspecific groups:

Proposed addition of Class B noxious weeds: A Class B noxious weed listing means that the WSNWCB would designate the species for control in areas where it is limited in distribution or altogether absent, and/or where its control is a priority. In designated areas, landowners would be required to control and prevent the spread of the Class B noxious weed. County noxious weed control boards would also have the option of selecting a Class B noxious weed for control where the state has not designated it.

Lesser celandine would only be designated in Snohomish, Skamania, Stevens and Pend Oreille counties at this time. To the best of our knowledge, the species is either absent or very limited in these counties and should not pose an economic burden on landowners.

Giant reed would be designated statewide for control riparian areas, wetlands, special flood hazard areas (one hundred-year flood plains), open irrigation waterways, or in a one hundred foot buffer beyond the edge of these areas in regions 1, 2, 3, 4, 5, and 6. The WSNWCB supports the responsible and careful commercial cultivation of this species and goes so far as to note in its proposed WAC language that the listing is not intended to affect the cultivation of giant reed outside of the designated areas. The designation is intended to allow for early detection/rapid response should commercially or ornamentally grown giant reed escape cultivation. To the best of our knowledge, no small business is growing giant reed in these designated and susceptible areas.

Proposed additions of Class C noxious weeds: A Class C listing of a species means that the WSNWCB recognizes that the species meets the criteria of a noxious weed. Control of Class C noxious weeds is not mandated by the state, although county noxious weed control boards have the option of selecting Class C noxious weeds for mandatory control at the local level. The WSNWCB and county weed boards can provide educational material about identification and control of these species.

Populations of nonnative cattails such as narrow-leaf cattail *(Typha angustifolia)* and its hybrid *Typha* x *glauca* are being detected in several wetlands, streams, ponds, and lakes in Washington. State agencies such as WDFW are concerned about their potential expansion in valuable habitat they manage and have already indicated that they will work to control them. At this time, it does not appear that county weed boards will require the control of these species.

Russian olive is already widespread in some parts of the state, but there are other areas where it has been established but is now starting to spread into right-of-ways, irrigation ditches, and riparian areas. At least one county weed board has indicated that it might select Russian olive for mandatory control to stave off additional spread. A weed district in this county is already requiring control of this invasive plant through chapter 17.04 RCW.

Proposed reclassifications of existing noxious weeds: The reclassification of noxious weeds velvetleaf and buffalobur could actually reduce control requirements. This is particularly true for farmers in Yakima and Franklin counties who have well-established populations of velvetleaf in their crop fields. Due to the persistent seed bank, many growers in these areas have technically been out of compliance due to the inability to eradicate these populations. The mandatory eradication of buffalobur would no longer be required, although most landowners will likely choose to destroy these plants as they appear, and some county weed boards may continue to require such action.

The proposed simplification of the nonnative hawkweed listings would be unlikely to impose any additional control requirements on landowners, including small businesses, since the designations of the two hawkweed genera overlap existing designations of Class B hawkweeds. The proposed

listings by subgenus would include other nonnative hawkweeds than those listed as noxious weeds *(e.g.,* spotted, whiplash, wall, and any hybrids); however, few if any are widely distributed in Washington. Spotted hawkweed has been sold as ornamental species but does not appear to be very common. Moreover, these unlisted hawkweeds are already included in an existing Class C noxious weed listing for all other nonnative hawkweeds not listed elsewhere on the noxious weed list.

Proposed reinsertion of Class C noxious weed exemption: The reinsertion of the exemption of bulbing fennel *(Foeniculum vulgare* var. *azoricum)* is to correct an oversight from 2013 rule making. It exempts a noninvasive variety of common fennel from noxious weed status. This would not pose an economic cost to small businesses.

Proposed modifications of current Class B designations: The proposed modifications of designations for twelve Class B noxious weeds would have minimal if any economic impacts to small businesses. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable. Additionally, many of these changes in designations reduce control requirements.

Alternatives to the Proposed Assessment:

Proposed addition of Class B noxious weeds: The alternative to the proposed listings would be that lesser celandine and giant reed are not added as Class B noxious weeds, resulting in a status quo of the current situation, whereby individual landowners or land managers have the option of voluntarily controlling the limited populations of lesser celandine and hopefully, any populations of giant reed that are found in riparian or wetland areas where there is a higher risk for invasiveness.

Proposed addition of Class C noxious weeds: The alternative to the proposed listings would be to not list the group of nonnative cattails and hybrids or Russian olive as Class C noxious weeds, resulting in a status quo of the current situation, whereby individual landowners or land managers have the option of voluntarily controlling these species. County noxious weed control boards could educate about tall hawkweed if it is a local concern, but control could not be mandated.

Proposed reinstatement of modified listing language of an existing noxious weed: The alternative to the proposed amendment to the current Japanese eelgrass listing is that it would remain a recognized Class C noxious weed without any modification, resulting in a status quo of the current situation. Individual landowners or land managers would have the option of voluntarily controlling this species, and county noxious weed control boards would have the option to require control of Japanese eelgrass everywhere, not just on commercially managed shellfish beds.

Proposed reclassifications of existing noxious weeds: The alternative to the proposed reclassifications of velvetleaf and buffalobur would be to leave them as Class A noxious weeds. All landowners statewide would be required to eradicate these noxious weeds. The alternative to reclassifying the yellow-flowered hawkweeds into two listings by subgenus would be to leave the ten individual hawkweed species as separate noxious weeds. County weed boards would still have the option of requiring the control of all other nonnative hawkweeds through the generic Class C listing of nonnative hawkweeds.

Proposed reinsertion of Class C noxious weed exemption: The alternative to the proposed reinsertion of this exemption would be to leave this unintentional omission in chapter 16-750 WAC. It would mean that, due to a technicality, the noninvasive variety of bulbing fennel would be recognized as a noxious weed.

Proposed modifications of current Class B designations: The alternative to the proposed modifications to Class B designations would be the [to] leave the designations the way they are. County weed boards would have the option of selecting these Class B nondesignates as county selects, but residents of counties that had requested that some species be undesignated would still be required to control them.

Conclusions: Few, if any, small businesses will be directly impacted by these proposed changes to the 2014 noxious weed list. Based on feedback from the horticultural industry, lesser celandine, nonnative cattails, nonnative hawkweeds, giant reed, and Russian olive do not appear to be widely carried in the nursery trade, so it is unlikely that these businesses will experience direct or even indirect negative impacts to sales or revenue. Businesses that are commercially growing giant reed in lower-risk, nonriparian areas will not be directly impacted by the Class B noxious weed listing. The majority of small businesses with Japanese eel grass on their property are commercial shellfish growers. An SBEIS analysis conducted in 2011, when Japanese eelgrass was last being considered as a Class C noxious weed on commercially managed shellfish beds only indicated that any foreseen negative impacts to sales or revenue would be the direct result of the nonnative plant Japanese eelgrass on their shellfish beds and not due to the actual noxious weed listing. The WSNWCB would not require control of this species and does not mandate control methods. Since shellfish growers and other property owners, including other small businesses, can control Japanese eelgrass whether or not it is listed as a noxious weed, these potential indirect impacts on businesses would not be the direct result of the noxious weed listing.

Based upon the above analysis, the WSNWCB concludes that minor costs - if any - imposed would affect less than ten percent of small businesses and would not exceed $100 in lost sales or revenue as a direct result of the proposed rule-making changes. Nor would any of these amendments to the noxious weed list directly cause the creation of or loss of any jobs. The WSNWCB concludes that small businesses will not be disproportionately impacted, nor would the proposed rule changes impose more than a minor cost on businesses in an industry. Therefore, we conclude that a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSNWCB is not one of the agencies listed in this section.

October 2, 2013
Alison Halpern
Executive Secretary

AMENDATORY SECTION (Amending WSR 13-01-038, filed 12/12/12, effective 1/12/13)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
broom, French	*Genista monspessulana*
broom, Spanish	*Spartium junceum*
((~~buffalobur~~	~~*Solanum rostratum*~~))
common crupina	*Crupina vulgaris*
cordgrass, common	*Spartina anglica*
cordgrass, ((~~dense flower~~)) dense-flowered	*Spartina densiflora*
cordgrass, salt meadow	*Spartina patens*
cordgrass, smooth	*Spartina alterniflora*
dyer's woad	*Isatis tinctoria*
eggleaf spurge	*Euphorbia oblongata*
false brome	*Brachypodium sylvaticum*
floating primrose-willow	*Ludwigia peploides*
flowering rush	*Butomus umbellatus*
garlic mustard	*Alliaria petiolata*
giant hogweed	*Heracleum mantegazzianum*
goatsrue	*Galega officinalis*
((~~hawkweed, European~~	~~*Hieracium sabaudum*~~
~~hawkweed, yellow devil~~	~~*Hieracium floribundum*~~))
hydrilla	*Hydrilla verticillata*
Johnsongrass	*Sorghum halepense*
knapweed, bighead	*Centaurea macrocephala*
knapweed, Vochin	*Centaurea nigrescens*
kudzu	*Pueraria montana* var. *lobata*
meadow clary	*Salvia pratensis*
oriental clematis	*Clematis orientalis*
purple starthistle	*Centaurea calcitrapa*
reed sweetgrass	*Glyceria maxima*
ricefield bulrush	*Schoenoplectus mucronatus*
sage, clary	*Salvia sclarea*
sage, Mediterranean	*Salvia aethiopis*
shiny geranium	*Geranium lucidum*
silverleaf nightshade	*Solanum elaeagnifolium*
spurge flax	*Thymelaea passerina*
Syrian bean-caper	*Zygophyllum fabago*
Texas blueweed	*Helianthus ciliaris*
thistle, Italian	*Carduus pycnocephalus*
thistle, milk	*Silybum marianum*
thistle, slenderflower	*Carduus tenuiflorus*
variable-leaf milfoil	*Myriophyllum heterophyllum*
((~~velvetleaf~~	~~*Abutilon theophrasti*~~))
wild four o'clock	*Mirabilis nyctaginea*

AMENDATORY SECTION (Amending WSR 13-01-038, filed 12/12/12, effective 1/12/13)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

	Name		Will be a "Class B designate" in all lands lying within:
(1)	blueweed, *Echium vulgare*	(a)	regions 1, 2, 3, 4, 6
		(b)	region 5, except Spokane County
(2)	Brazilian elodea, *Egeria densa*	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	region 2, except Kitsap and Snohomish counties
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, *Anchusa arvensis*	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, *Anchusa officinalis*	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County

	Name		Will be a "Class B designate" in all lands lying within:
(5)	butterfly bush, *Buddleja davidii*	(a)	The portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 2
		(b)	Cowlitz County of region 3
(6)	camelthorn, *Alhagi maurorum*	(a)	regions 1, 2, 3, 4, and 5
		(b)	region 6, except Walla Walla County
(7)	common fennel, *Foeniculum vulgare* (except bulbing fennel, *F. vulgare* var. *azoricum*)	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, *Phragmites australis* (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6
(9)	Dalmatian toadflax, *Linaria dalmatica* ssp. *dalmatica*	(a)	regions 1, 2, and 3
		(b)	Adams and Lincoln counties of region 5
		(c)	Benton and Walla Walla counties of region 6
(10)	Eurasian watermilfoil, *Myriophyllum spicatum*	(a)	region 1, except Pacific and Mason counties
		(b)	Island and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams and Lincoln counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(11)	fanwort, *Cabomba caroliniana*	(a)	regions 2, 4, 5, and 6
		(b)	region 1, except Grays Harbor
		(c)	region 3, except Cowlitz County
(12)	giant reed, *Arundo donax*	(a)	within riparian areas, wetlands, special flood hazard areas (100-year flood plains), open irrigation waterways, or in a 100 ft. buffer beyond the edge of these areas in regions 1, 2, 3, 4, 5, and 6. This is not meant to affect commercially cultivated giant reed grown outside of these designated areas.
(13)	gorse, *Ulex europaeus*	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
(((~~(13)~~))) (14)	grass-leaved arrowhead, *Sagittaria graminea*	(a)	region 1, except Mason County
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(((~~(14)~~))) (15)	hairy willow-herb, *Epilobium hirsutum*	(a)	regions 1 ((~~and~~)), 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	Asotin, Columbia, and Garfield counties of region 6
(((~~(15)~~))) (16)	hawkweed oxtongue, *Picris hieracioides*	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(((~~(16)~~	~~hawkweed, mouseear, *Hieracium pilosella*~~	~~(a)~~	~~region 1, except Grays Harbor County~~
		~~(b)~~	~~region 2, except Pierce and Thurston counties~~

	Name		Will be a "Class B designate" in all lands lying within:
		~~(c)~~	~~region 3, except Lewis County~~
		~~(d)~~	~~regions 4 and 6~~
		~~(e)~~	~~region 5, except Klickitat County~~))
(17)	hawkweed, orange, *Hieracium aurantiacum*	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(((~~(18)~~	~~hawkweed, queen-devil, *Hieracium glomeratum*~~	~~(a)~~	~~regions 1, 2, 3, 5, and 6~~
		~~(b)~~	~~region 4, except Pend Oreille and Stevens counties~~
~~(19)~~	~~hawkweed, smooth, *Hieracium laevigatum*~~	~~(a)~~	~~regions 1, 3, 5, and 6~~
		~~(b)~~	~~region 2, except Skagit and Whatcom counties~~
		~~(c)~~	~~region 4, except Pend Oreille and Stevens counties~~
~~(20)~~	~~hawkweed, tall, *Hieracium piloselloides*~~	~~(a)~~	~~regions 1, 2, 3, 5, and 6~~
		~~(b)~~	~~region 4, except Pend Oreille and Stevens counties~~
~~(21)~~	~~hawkweed, yellow, *Hieracium caespitosum*~~	~~(a)~~	~~region 1, except Pacific County~~
		~~(b)~~	~~regions 2 and 6~~
		~~(c)~~	~~region 3, except Cowlitz County~~
		~~(d)~~	~~region 4, except Pend Oreille and Stevens counties~~
		~~(e)~~	~~region 5, except Klickitat and Spokane counties~~))
(18)	hawkweeds: All nonnative species and hybrids of the Meadow subgenus (*Pilosella*), including, but not limited to, mouseear (*Hieracium pilosella*), pale (*H. lactucella*), queen-devil (*H. glomeratum*), tall (*H. piloselloides*), whiplash (*H. flagellare*), yellow (*H. caespitosum*), and yellow-devil (*H.* x *floribundum*)	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Cowlitz County
		(d)	Chelan, Douglas, and Okanogan counties of region 4
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6
(19)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (*Hieracium*), including, but not limited to, common (*Hieracium lachenalii*), European (*H. sabaudum*), polar (*H. atratum*), smooth (*H. laevigatum*), spotted (*H. maculatum*), and wall (*H. lactucella*)	(a)	regions 1, 3, 5, and 6
		(b)	region 2, except Skagit and Whatcom counties
		(c)	region 4, except Stevens County
(((~~(22)~~))) (20)	herb-Robert, *Geranium robertianum*	(a)	regions 4, 5, and 6
(((~~(23)~~))) (21)	hoary alyssum, *Berteroa incana*	(a)	regions 1, 2, 3, and 6
		(b)	All areas south of highway 20 in Ferry County and all areas in Okanogan County except Ranges 29-31 East of Townships 37-40 North of region 4
		(((~~(c)~~	~~All areas in Okanogan County of region 4, except Ranges 29-31 East of Townships 37-40 North~~))

Name			Will be a "Class B designate" in all lands lying within:
		(((~~(d)~~))) (c)	region 5, except Klickitat County
(((~~(24)~~))) (22)	houndstongue, *Cynoglossum officinale*	(a)	regions 1, 2, and 3
		(b)	Chelan County of region 4
		(c)	Yakima, Grant and Adams counties of region 5
		(d)	Benton County of region 6
(((~~(25)~~))) (23)	indigobush, *Amorpha fruticosa*	(a)	regions 1, 2, and 4
		(b)	Lewis and Skamania counties of region 3
		(c)	region 5, except Klickitat County
(((~~(26)~~))) (24)	knapweed, black, *Centaurea nigra*		regions 1, 2, 3, 4, 5, and 6
(((~~(27)~~))) (25)	knapweed, brown, *Centaurea jacea*		regions 1, 2, 3, 4, 5, and 6
(((~~(28)~~))) (26)	knapweed, diffuse, *Centaurea diffusa*	(a)	region 1, except Mason County
		(b)	regions 2 and 3
		(c)	Adams County of region 5
(((~~(29)~~))) (27)	knapweed, meadow, *Centaurea jacea x nigra*	(a)	regions 1 ((~~and~~)), 3, and 4
		(b)	region 2, except Pierce and Whatcom counties
		(c)	Thurston County of region 2, except below the ordinary high water mark of the Nisqually River
		(((~~(d)~~	~~region 4, except Pend Oreille County~~))
		(((~~(e)~~))) (d)	region 5, except Kittitas and Klickitat counties
		(((~~(f)~~))) (e)	region 6, except Franklin and Walla Walla counties
(((~~(30)~~))) (28)	knapweed, Russian, *Acroptilon repens*	(a)	regions 1, 2, and 3
		(b)	Ferry and Pend Oreille counties of region 4
		(c)	Lincoln, Spokane, and Whitman counties of region 5
		(d)	Adams County of region 5, except for the area west of Highway 17 and north of Highway 26
		(e)	Asotin and Garfield counties of region 6
(((~~(31)~~))) (29)	knapweed, spotted, *Centaurea stoebe*	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	region 3
		(d)	Ferry County of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(((~~(32)~~))) (30)	knotweed, Bohemian, *Polygonum* x *bohemicum*	(a)	Island County of region 2
		(b)	Cowlitz and Skamania counties of region 3
		(c)	region 4, except ((~~Pend Oreille and~~)) Stevens ((~~counties~~)) County
		(d)	regions 5, except Whitman and Yakima counties
		(e)	region 6
(((~~(33)~~))) (31)	knotweed, giant, *Polygonum sachalinense*	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except Lewis County
		(c)	regions 4, 5, and 6

Name		Will be a "Class B designate" in all lands lying within:	
(((~~(34)~~))) (32)	knotweed, Himalayan, *Polygonum polystachyum*	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	Cowlitz, Lewis and Skamania counties of region 3
		(d)	region 4, except Stevens County
		(e)	regions 5 and 6
(((~~(35)~~))) (33)	knotweed, Japanese, *Polygonum cuspidatum*	(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	Cowlitz and Skamania counties of region 3
		(c)	region 4, except Okanogan and Stevens counties
		(d)	region 5, except Spokane County
		(e)	region 6
(((~~(36)~~))) (34)	kochia, *Kochia scoparia*	(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
		(c)	Adams County of region 5
(35)	lesser celandine, *Ficaria verna*	(a)	Snohomish County of region 2
		(b)	Skamania County of region 3
		(c)	Pend Oreille and Stevens counties of region 4
(((~~(37)~~))) (36)	loosestrife, garden, *Lysimachia vulgaris*	(a)	regions 1, 2, 3, 4, 5, 6
(((~~(38)~~))) (37)	loosestrife, purple, *Lythrum salicaria*	(a)	Clallam and Jefferson counties of region 1
		(b)	region 2, except Kitsap, Pierce, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	Columbia, Garfield, and Walla Walla counties of region 6
(((~~(39)~~))) (38)	loosestrife, wand, *Lythrum virgatum*	(a)	Clallam and Jefferson counties of region 1
		(b)	region 2, except Kitsap, Pierce, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	Columbia, Garfield, and Walla Walla counties of region 6
(((~~(40)~~))) (39)	parrotfeather, *Myriophyllum aquaticum*	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(((~~(41)~~))) (40)	perennial pepperweed, *Lepidium latifolium*	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(((~~(42)~~))) (41)	poison hemlock, *Conium maculatum*	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan and Pend Oreille counties of region 4

Name			Will be a "Class B designate" in all lands lying within:
		(e)	Grant, Kittitas and Lincoln counties of region 5
(((~~(43)~~))) (42)	policeman's helmet, *Impatiens glandulifera*	(a)	region 1, except Pacific County
		(b)	region 2, except Pierce, Thurston, and Whatcom counties
		(c)	region 3, except Clark County
		(((~~(d)~~	~~region 4, except Pend Oreille County~~))
		(((~~(e)~~))) (d)	regions 4, 5, and 6
(((~~(44)~~))) (43)	puncturevine, *Tribulus terrestris*	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(((~~(45)~~))) (44)	rush skeletonweed, *Chondrilla juncea*	(a)	regions 1 and 3
		(b)	region 2, except Kitsap County
		(c)	region 4, except all areas of Stevens County south of Township 29
		(d)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(e)	Asotin County of region 6
(((~~(46)~~))) (45)	saltcedar, *Tamarix ramosissima* (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, and 5
		(b)	region 2, except King and Thurston counties
		(c)	region 6, except Benton and Franklin counties
(((~~(47)~~))) (46)	Scotch broom, *Cytisus scoparius*	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(((~~(48)~~))) (47)	spurge laurel, *Daphne laureola*	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King ((~~and~~)), Kitsap, and Pierce counties
		(c)	region 3, except Skamania County
		(d)	regions 4, 5, and 6
(((~~(49)~~))) (48)	spurge, leafy, *Euphorbia esula*	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane and Whitman counties
		(c)	region 6, except Columbia and Garfield counties
(((~~(50)~~))) (49)	spurge, myrtle, *Euphorbia myrsinites*	(a)	((~~regions 1, 3, 5, and 6~~)) region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Whatcom counties
		(((~~(b)~~))) (c)	((~~region 2, except King, Kitsap, and Whatcom counties~~)) regions 3, 5, and 6
		(((~~(c)~~))) (d)	region 4, except Okanogan and Stevens counties
(((~~(51)~~))) (50)	sulfur cinquefoil, *Potentilla recta*	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
(((~~(52)~~))) (51)	tansy ragwort, *Senecio jacobaea*	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4 and 6

Name			Will be a "Class B designate" in all lands lying within:
		(d)	region 5, except Klickitat County
(((~~(53)~~))) (52)	thistle, musk, *Carduus nutans*	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County
(((~~(54)~~))) (53)	thistle, plumeless, *Carduus acanthoides*	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except ((~~Pend Oreille County and~~)) those areas north of State Highway 20 in Stevens County
(((~~(55)~~))) (54)	thistle, Scotch, *Onopordum acanthium*	(a)	regions 1, 2, and 3
		(b)	region 4, except Douglas County
		(c)	region 5, except Spokane and Whitman counties
(55)	velvetleaf, *Abutilon theophrasti*	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Yakima County
		(c)	region 6, except Franklin County
(56)	water primrose, *Ludwigia hexapetala*	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County
(57)	white bryony, *Bryonia alba*	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton County of region 6
(58)	wild chervil, *Anthriscus sylvestris*	(a)	regions 1, 4, and 6
		(b)	region 2, except Island and Whatcom ((~~County~~)) counties
		(c)	Wahkiakum and Lewis counties of region 3
		(d)	region 5, except Whitman County
(59)	yellow archangel, *Lamiastrum galeobdolon*	(a)	Clallam County of region 1
		(b)	Island, San Juan, Skagit, and Whatcom counties of region 2
		(c)	Cowlitz, Skamania and Wahkiakum counties of region 3
		(d)	regions 4, 5, and 6
(60)	yellow floating heart, *Nymphoides peltata*	(a)	regions 1, 2, and 6
		(b)	region 3, except Cowlitz County
		(c)	region 4, except Stevens County
		(d)	region 5, except Spokane County
(61)	yellow nutsedge, *Cyperus esculentus*	(a)	regions 1, 3, and 4
		(b)	region 2, except Skagit and Thurston counties
		(c)	region 5, except Klickitat and Yakima Counties
		(d)	region 6, except Franklin and Walla Walla counties
(62)	yellow starthistle, *Centaurea solstitialis*	(a)	regions 1, 2, and 3
		(b)	region 4, except T36 R38 ((~~north of~~)) in the area contained within Hwy 395/Hwy 20 ((~~and west of~~)), Pingston Creek Road, and Highland Loop Road in Stevens County
		(c)	region 5, except Klickitat, and Whitman counties

AMENDATORY SECTION (Amending WSR 13-01-038, filed 12/12/12, effective 1/12/13)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name
absinth wormwood	*Artemisia absinthium*
Austrian fieldcress	*Rorippa austriaca*
babysbreath	*Gypsophila paniculata*
black henbane	*Hyoscyamus niger*
blackberry, evergreen	*Rubus laciniatus*
blackberry, Himalayan	*Rubus armeniacus*
blackgrass	*Alopecurus myosuroides*
buffalobur	*Solanum rostratum*
cereal rye	*Secale cereale*
common barberry	*Berberis vulgaris*
common catsear	*Hypochaeris radicata*
common groundsel	*Senecio vulgaris*
common St. Johnswort	*Hypericum perforatum*
common tansy	*Tanacetum vulgare*
common teasel	*Dipsacus fullonum*
curly-leaf pondweed	*Potamogeton crispus*
English ivy 4 cultivars only:	*Hedera hibernica* 'Hibernica'
	Hedera helix 'Baltica'
	Hedera helix 'Pittsburgh'
	Hedera helix 'Star'
field bindweed	*Convolvulus arvensis*
fragrant water lily	*Nymphaea odorata*
hairy whitetop	*Cardaria pubescens*
((~~hawkweed, common~~	~~*Hieracium lachenalii*~~
~~hawkweed, polar~~	~~*Hieracium atratum*~~
~~hawkweed, other nonnative species~~	~~*Hieracium spp.*, except species designated in the note in the left-hand column~~
~~**Note:**~~	
~~This listing includes all species of *Hieracium*, except the following:~~	
~~• Species designated as Class A noxious weeds in WAC 16-750-005;~~	
~~• Species designated as Class B noxious weeds in WAC 16-750-011;~~	
~~• Native species designated below:~~	
~~— Canada hawkweed (*H. canadense*)~~	
~~— houndstongue hawkweed (*H. cynoglossoides*)~~	
~~— long-beaked hawkweed (*H. longiberbe*)~~	
~~— narrow-leaved hawkweed (*H. umbellatum*)~~	
~~— slender hawkweed (*H. gracile*)~~	
~~— western hawkweed (*H. albertinum*)~~	
~~— white-flowered hawkweed (*H. albiflorum*)~~	
~~— woolley-weed (*H. scouleri*)~~)))	
hoary cress	*Cardaria draba*
Japanese eelgrass (on commercially managed shellfish beds only)	*Zostera japonica*
jointed goatgrass	*Aegilops cylindrica*
lawnweed	*Soliva sessilis*
lepyrodiclis	*Lepyrodiclis holosteoides*
longspine sandbur	*Cenchrus longispinus*
nonnative cattail species and hybrids	Including, but not limited to, *Typha angustifolia, T. domingensis, T. minima,* and *T.* x *glauca*
old man's beard	*Clematis vitalba*
oxeye daisy	*Leucanthemum vulgare*
perennial sowthistle	*Sonchus arvensis* ssp. *arvensis*
reed canarygrass	*Phalaris arundinacea*
Russian olive	*Elaeagnus angustifolia*
scentless mayweed	*Matricaria perforata*
smoothseed alfalfa dodder	*Cuscuta approximata*
spikeweed	*Hemizonia pungens*
spiny cocklebur	*Xanthium spinosum*
Swainsonpea	*Sphaerophysa salsula*
thistle, bull	*Cirsium vulgare*
thistle, Canada	*Cirsium arvense*
tree-of-heaven	*Ailanthus altissima*
white cockle	*Silene latifolia* ssp. *alba*
wild carrot (except where commercially grown)	*Daucus carota*

Common Name	Scientific Name
yellow flag iris	*Iris pseudacorus*
yellow toadflax	*Linaria vulgaris*

WSR 13-20-138
PROPOSED RULES
DEPARTMENT OF LICENSING
[Filed October 2, 2013, 10:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-062 and 13-11-145.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology, barber, manicurist, esthetician.

Hearing Location(s): Department of Licensing, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on November 5, 2013, at 10:30 a.m.

Date of Intended Adoption: November 12, 2013.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail ndalmas@dol.wa.gov, fax (360) 664-2550, by October 29, 2013.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by October 29, 2013, TTY (360) 664-0116 or (360) 664-6443.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes will amend chapter 308-20 WAC to:

- Update recordkeeping for schools and apprentice shops.
- Update minimum instruction requirements for the esthetics license.
- Create minimum instruction guidelines for the master esthetics license.
- Update safety and sanitation standards for schools, cosmetologists, manicurists, estheticians, master estheticians, barbers, instructors, salons/shops, mobile units and personal services.
- Create expiration dates for certified training hours and examination results.
- Update requirements for preinspection and license renewal for schools.

Reasons Supporting Proposal: SHB 1779 was passed during the 2013 legislative session giving the department authority to modify the license requirements for estheticians. Also, stakeholders that the department regularly works with have requested the existing safety and sanitation procedures be updated and amended for clarity, intent, and statutory authority. The proposed rule amendments are supported by industry and meets exemption criteria outlined in Executive Order 10-06.

Statutory Authority for Adoption: RCW 18.16.030, 43.24.023.

Statute Being Implemented: Chapter 18.16 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.310 (4)(g)(ii).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 2, 2013
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-040 Student records. (1) Schools shall collect and record monthly and final student reports. These reports as described in WAC 308-20-010 shall contain the cumulative number of hours the student has attended class and the number of times the student performs an activity as described in WAC 308-20-080. The hours attended shall not be recorded in less than one-quarter hour increments. Each monthly report shall include the month and the year.

(2) Monthly and final student reports shall be signed by ((~~either the school owner, school manager or a person the school has authorized to sign the student reports~~)) an instructor who is licensed in the curriculum being taught and is employed at the school where the student is enrolled.

(3) The school shall certify ((~~to the department~~)) that ((~~the~~)) a student has satisfied the minimum instruction guidelines described in WAC 308-20-080 ((~~on the student's license examination application. Certification shall be by a person authorized to sign student reports according to subsection (2) of this section~~)) at the time the final hours are reported to the department.

(4) Schools shall maintain student records on the school premises for at least three years. The student records shall include documentation of student training including the monthly student reports.

(5) The school shall notify the department of the persons authorized to sign student records on the school data sheet.

(((~~(6) Weekly reports provided by salon/shops verifying hours student earns in salon training must be included in student's records and recorded on student's monthly and final reports.~~)))

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-055 Apprentice records. (1) Apprentice salon/shops shall collect and record monthly and final apprentice training records. These reports described in WAC 308-20-010(8) shall contain the cumulative number of hours the apprentice has earned in each area of the minimum instruction guidelines and the number of times an apprentice performs an activity. Records shall include the month, year, and daily activities of the apprentice in each subject.

(2) Copies of each apprentice's records shall be kept on file at the apprentice salon shop for the duration of training for each apprentice and provided to the apprentice and the apprenticeship program at the end of each month of training.

(3) Monthly and final apprentice records shall be signed by the trainer and shop owner. The apprentice salon/shop shall notify the department of persons authorized to sign the apprentice's records on forms provided by the department.

(4) ((~~At the completion of training~~)) The apprenticeship program shall certify ((~~to the department on forms provided by the department~~)) that ((~~the~~)) an apprentice has satisfied the minimum ((~~number of training hours~~)) instruction guidelines required in the standards of the apprenticeship program ((~~which must include the minimum instruction requirements for cosmetology, barbering, manicuring and esthetics training~~)) as described in WAC 308-20-080 at the time the final hours are reported to the department.

(5) The apprentice records shall be maintained by the shop during the training and by the Washington state apprenticeship and training committee for three years once training is completed. The apprentice records shall include documentation of apprentice training.

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-065 Student and apprentice registration. (1) All schools and apprentice shops shall register any new student to the department in a manner and format prescribed by the department.

(2) At least one time per month, on or before the tenth day of the month, schools and apprentice shops shall submit to the department, a record of each student or apprentice's accrued clock hours in a manner and format prescribed by the department. A school or apprentice shop's initial submission of clock hours shall include all hours accrued at the school or apprentice shop and all transferred hours received by the school or apprentice shop.

(3) Upon graduation, a school shall certify in a manner and format prescribed by the department that a student has completed the curriculum hours approved by the department.

(4) Upon completion of the apprenticeship training program, the apprentice shop shall certify in a manner and format prescribed by the department that an apprentice has completed the minimum number of training hours approved by the department.

(((~~(4)~~))) (5) Schools and apprentice shops shall ((~~submit~~)) report a student or apprentice's withdrawal or termination to the department, in a manner and format prescribed by the department, within ten calendar days ((~~after~~)) of the withdrawal or termination.

(((~~(5)~~))) (6) Schools and apprentice shops shall ((~~submit~~)) report a student or apprentice's leave of absence request approved by the school or apprentice shop to the department, in a manner and format prescribed by the department, within ten calendar days of the start date of the leave.

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-080 Minimum instruction guidelines for cosmetology, barbering, manicuring and esthetics training. The minimum instruction guidelines for training required for a student or apprentice to be eligible to take the license examination for the following professions shall include:

(1) For cosmetology:

(a) Theory of the practice of cosmetology((~~, barbering, manicuring and esthetics services~~)) including business practices;

(b) At least 100 hours of skills in the application of manicuring and pedicuring services;

(c) At least 100 hours of skills in the application of esthetics services;

(d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;

(e) Scalp and hair analysis;

(f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;

(g) Hair styling including wet, dry and thermal styling, braiding and styling aids;

(h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;

(i) Artificial hair ((~~that may include extensions and fitting~~));

(j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl ((~~and~~)), neutralizing and removal of chemicals;

(k) Chemical relaxing including sectioning, strand test, ((~~and~~)) relaxer application, and removal of chemicals;

(l) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;

(m) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(n) Diseases and disorders of the scalp, hair, skin and nails;

(o) Safety including proper use and storage of chemicals, implements and electrical appliances;

(p) First aid as it relates to cosmetology((~~, barbering, manicuring and esthetics~~)); and

(q) Students shall train using a combination of mannequin and live client training with no more than twenty-five percent of skills training using mannequins.

(2) For barbering:

(a) Theory of the practice of barbering services and business practices;

(b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;

(c) Scalp and hair analysis;

(d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;

(e) Hair styling, wet, dry and thermal styling and styling aids;

(f) Cutting and trimming of facial hair including shaving, beard and mustache design and eyebrow, ear and nose hair trimming;

(g) Artificial hair;

(h) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(i) Diseases and disorders of the skin, scalp and hair;

(j) Safety including proper use of implements and electrical appliances;

(k) First aid as it relates to barbering; and

(l) Students shall train using a combination of mannequin and live client training with no more than twenty-five percent of skills training using mannequins.

(3) For manicuring:

(a) Theory in the practice of manicuring and pedicuring services and business practices;

(b) Artificial nails including silk, linen, fiberglass, acrylic, gel, powder, extensions and sculpting, preparation, application, finish and removal;

(c) Cleaning, shaping and polishing of nails of the hands and feet and treatment of cuticles;

(d) ((~~Cleaning, shaping and polishing of nails of the feet;~~

~~(e)~~)) Sanitizing and disinfecting of individual work station, individual equipment and tools and proper use and storage of linens;

(((~~f~~))) (e) Diseases and disorders of the nails of the hands and feet;

(((~~g~~))) (f) Safety including proper use and storage of chemicals, implements and electrical appliances;

(((~~h~~))) (g) First aid as it relates to manicuring and pedicuring; and

(((~~i~~))) (h) Students shall train using a combination of mannequin and live client training with no more than twenty-five percent of skills training using mannequins.

(4) For esthetics:

(((~~a~~))) Theory in the practice of esthetics services((~~,~~)) and business practices (750 hours):

(((~~b~~))) (a) Care of the skin ((~~care of the face, neck and hands including hot~~)) compresses, massage, wraps, masks, exfoliation, use of electrical or mechanical appliances or chemical compounds;

(((~~(c) Facials;~~

~~(d)~~))) (b) Temporary removal of superfluous hair of the ((~~face, neck and hands~~)) skin by means including tweezing, waxing, tape, chemicals, lotions, creams, sugaring, threading, mechanical or electrical apparatus and appliances;

(((~~e~~))) (c) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(((~~f~~))) (d) Diseases and disorders of the skin of the face, neck and hands;

(((~~g~~))) (e) Safety including proper use and storage of chemicals, implements and electrical appliances;

(((~~h~~))) (f) First aid as it relates to esthetics; and

(((~~i~~))) (g) Students shall train using a combination of mannequin and live client training with no more than twenty-five percent of skills training using mannequins.

(5) Master esthetics (450 additional hours):

Theory in the practice of master esthetics and business practices includes all of subsection (4) of this section and the following:

(a) Exfoliation and medical esthetic procedures;

(b) Laser, light frequency, radio frequency, ultrasound, and plasma practices;

(c) Medium depth chemical peels;

(d) Advanced client assessment, documentation, and indications/contraindications;

(e) Pretreatment and post-treatment procedures;

(f) Lymphatic drainage and advanced facial massage; and

(g) Advanced diseases and disorders of the skin.

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-090 Student credit for training in a licensed school. (1) A maximum of twenty students per instructor is required within a licensed school.

(2) Only those hours of instruction a student is given under the direction of a licensed instructor of the licensed school in which the student is enrolled and in the courses listed in WAC 308-20-080 and 308-20-105 or hours earned under WAC 308-20-091 shall be credited toward completion of the course of study required in RCW 18.16.100.

(3) When all of a school's requirements have been met by a student and within thirty days of a student leaving a school, the school shall provide to the student a certified copy of the student's final report and refer the student for examination(s) in a manner and format prescribed by the department.

(4) Students may transfer between the schools and apprenticeship salon/shops licensed under chapter 18.16 RCW and may receive credit toward completion of the curriculum in the new school or apprenticeship salon/shop. In order to ((~~receive~~)) enroll a transfer student or apprentice, the new school or apprentice salon/shop shall do the following:

(a) Confirm that the student is available for transfer through the student registration process in a manner and format prescribed by the department;

(b) Evaluate the certified final student report provided by the student or apprentice and compare the report with the new school or apprentice salon/shop curriculum requirements; and

(((~~b~~))) (c) The new school or apprentice salon/shop may accept or reject the final student or apprentice report in part or in total from the previous school or salon/shop and shall prepare a monthly report that documents the amount of instructions being accepted.

(5) Both the transferring and receiving school or salon/shop shall maintain student or apprentice records including the transfer record as required in WAC 308-20-040(4).

(6) Licensed instructors must be physically present where the students are training.

(7) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-091 Student credit for training in a licensed salon/shop. (1) A maximum ten percent of the total curriculum hours required may be earned by a student in a licensed salon/shop under a contract approved by the department signed by the student, the school owner, and the salon/shop manager.

(2) A copy of the signed contract shall be kept in the student file, kept on file at the salon shop and given to the student and shall be made available to the department on request.

(3) Only those hours of instruction a student is given under the direction of a licensed operator in the contracted salon/shop and in the subjects agreed to in the contract shall be credited towards completion of the course of study required in RCW 18.16.100.

(((~~(3)~~))) (4) Students will not receive any wages or commission for hours of credit earned in a salon/shop.

(((~~(4)~~))) (5) Salon/shops shall provide weekly reports to the school((~~s~~)) and student with hours the student earned in each area of agreed training.

(((~~(5) Licensed operators must be physically present where students are training.~~)))

(6) Weekly reports provided by salon/shops verifying hours student earns in salon training must be included in student's records and recorded on student's monthly and final reports.

(7) Licensed operators must be physically present where students are training.

(8) Students in training must wear identification visible to the public that states that they are students in training.

(9) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 08-22-029, filed 10/28/08, effective 2/1/09)

WAC 308-20-101 Apprentice credit for training in an approved apprentice salon/shop. (1) A minimum of one trainer per apprentice is required.

(2) Only those hours of theory instruction given under the direction of an instructor licensed under chapter 18.16 RCW shall be credited towards completion of the apprentice curriculum requirements for theory hours. Cosmetologist, barber, manicurist and esthetician theory hours must be taught in a classroom setting under the direct supervision of an instructor licensed in the curriculum for which he or she is providing theory instruction.

(3) With the exception of theory hours, only those hours of instruction an apprentice is given under the direction of an apprentice trainer as defined in WAC 308-20-010 and in the standards developed by the apprenticeship program shall be credited toward completion of the apprenticeship training.

(4) When all of the apprenticeship program requirements have been met by the apprentice and within thirty days of an apprentice's completed training, the committee shall provide to the apprentice a copy of the apprentice's final report.

(5) An apprentice may transfer between shops only when the ((~~committee~~)) Washington state apprenticeship council or the Washington state department of labor and industries approves the transfer.

(6) Apprentice trainers and instructors must be physically present where apprentices are receiving practical training.

(7) Certified training hours expire three years from last date of attendance. Any hours earned by an apprentice that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 03-14-046, filed 6/24/03, effective 7/25/03)

WAC 308-20-105 Minimum instruction requirements for instructor-trainees. The minimum instruction requirements for a student to be eligible to take the examination to be licensed as an instructor shall include, but not be limited to:

(1) Preparation for classroom activities including, but not limited to:

(a) Choice of teaching methods;

(b) Classroom setup;

(c) Topic/subject matter;

(d) Written lesson plans;

(e) Student assignments;

(((~~(e)~~))) (f) Materials and supplies; and

(((~~(f)~~))) (g) Recordkeeping.

(2) Presentation of information including, but not limited to:

(a) Lectures (((~~oral and written~~)));

(b) Demonstrations;

(c) Questions and answers;

(d) Project methods; and

(e) Discussions.

(3) Application of practice including, but not limited to:

(a) Clinic supervision;

(b) Classroom management; and

(c) Client relations.

(4) Evaluation by the instructor-trainee of the student's understanding and performance including, but not limited to:

(a) Written/practical assessment; and

(b) Communication skills.

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-107 Use and training of instructor-trainees. (1) Instructor-trainees shall be supervised at all times by a licensed instructor. The licensed instructor shall be physically present where the instructor-trainee is working and be available for consultation with the instructor-trainee.

(2) Instructor-trainees shall hold a current Washington state cosmetology, barber, manicurist ((~~or~~)), esthetician, or master esthetician license in good standing prior to ((~~becoming~~)) enrolling in an instructor-trainee program. A copy of the

instructor-trainee's valid Washington state operator license shall be kept in the student's file.

AMENDATORY SECTION (Amending WSR 07-14-066, filed 6/29/07, effective 8/1/07)

WAC 308-20-110 Minimum safety and sanitation standards for schools, cosmetologists, manicurists, estheticians, barbers, instructors, salons/shops, mobile units and personal services. Every licensee shall maintain the following safety and sanitation standards. In addition, school instructors and apprentice trainers must assure persons training in a school or apprentice salon/shop will adhere to the following safety ((~~and~~)), sanitation and disinfection standards:

(1) **Requirements and standards.**

(a) All locations where chemical services are provided to clients must have a dispensing sink with hot and cold running water. Dispensing sinks are used for mixing chemicals, and disinfecting supplies, tools, equipment, and other materials. Dispensing sinks must be labeled "not for public use."

(b) On-site laundry facilities must be maintained in a sanitary condition.

(c) Single-use hand soap and disposable or single-use hand-drying towels for customers must be provided.

(d) Use of bar soap or a common towel is prohibited.

(e) Licensees must not ((~~work~~)) perform or continue services on a client((~~s~~)) with visible parasites, open wounds, or signs of infection. If the licensee has reason to believe or observes that the client has a contagious condition such as head lice, nits, ringworm, an open wound or sore or signs of infection in the area to be serviced, the licensee must:

(i) **Stop** services immediately in a safe manner;

(ii) **Inform** the client of the reason the service was stopped;

(iii) **Sanitize and disinfect** all affected tools and work areas.

(f) ((~~Licensees must sanitize and disinfect affected work area if visible parasites, open wounds, or signs of infection are found on a client.~~)) A licensee who has a contagious disease, visible parasite, or open wound of a nature that may be transmitted, must not perform services on a client until the licensee takes medically approved measures to prevent transmission of the disease.

(g) ((~~Creams and lotions must be dispensed using a disposable, or sanitized and disinfected applicator, and liquids must be dispensed with a squeeze bottle or pump.~~)) All liquids, creams, and other cosmetic preparations including paraffin wax and depilatory wax must be kept in clean and closed containers.

(h) ((~~Wash hands with single-use soap and/or hand sanitizer and disposable or single-use hand-drying towels after restroom use and before providing service to each client.~~

~~(i) Waste containers must be emptied, sanitized and disinfected daily.~~

~~(j)~~)) All bottles and containers must be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances must be additionally and distinctly marked as such.

(i) Items subject to possible cross contamination such as liquids, creams and lotions, cosmetic preparations and chemicals including paraffin wax and depilatory wax must be dispensed in a way that does not contaminate the remaining portion by using a disposable, or sanitized and disinfected applicator. Applicators shall not be redipped in product. Liquids must be dispensed with a squeeze bottle or pump. Any product that becomes contaminated shall be discarded after use on that particular client.

(j) Pencil cosmetics must be sharpened before each use. Sanitize and disinfect or dispose of the sharpener after service on each client.

(k) A licensee must thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom.

(l) A client's skin upon which services will be performed must be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a service on the hands and feet.

(m) After service on each client, hair and nail clippings must immediately be placed in a closed covered container.

(2) ((~~**Personal cleanliness.**~~

~~(a) A licensee must thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating or using the restroom.~~

~~(b) A client's skin upon which services will be performed must be washed with soap and warm water or wiped with disinfectant or waterless hand cleanser approved for use on skin before a service on the hands and feet.~~

~~(c) A licensee who has a contagious disease, visible parasite, or open wound of a nature that may be transmitted, must not perform services on a client until the licensee takes medically approved measures to prevent transmission of the disease.~~

~~(3)~~)) **Articles in contact with a client.**

(a) A neck strip or towel must be placed around the client's neck to prevent direct contact between a multiple use haircloth or cape and the client's skin, and must be in place during entire service.

(b) All items, which come in direct contact with the client's skin that do not require disinfecting, must be sanitized; ((~~to include~~)) including reusable gloves.

(((~~(c) All articles, which come in direct contact with the client's skin that cannot be sanitized and disinfected, must be disposed of in a waste receptacle immediately after service on each client.~~

~~(d) Disposable protective gloves must be disposed of after service on each client.~~

~~(4) **Materials in contact with a client.**~~

~~(a) All chemical substances, including paraffin wax must be dispensed from containers in a manner to prevent contamination of the unused portion.~~

~~(b) Any part of the body being immersed in paraffin wax must be sanitized with soap and water or sanitizing solution.~~

~~(c) Paraffin wax must be covered when not in use, and maintained at a temperature specified by the manufacturer's instructions.~~

~~(5)~~)) (3) **Materials in contact with a client.**

(a) Paraffin wax and depilatory wax must be covered in a manner to prevent contamination except during the waxing service, and maintained at a temperature specified by the manufacturer's instructions.

(b) Paraffin wax and depilatory wax must be dispensed in a way that does not contaminate the remaining portion by using one of the following methods:

(i) Use a new spatula each time wax is removed from the pot;

(ii) Apply wax directly onto a disposable strip;

(iii) Use one dedicated spatula to remove wax from the pot, and then spread the wax with a second spatula. The first spatula should never come in contact with either the client's skin or the second spatula; or

(iv) Separate a quantity of wax from the main wax pot to use on a single client; this quantity should be placed in a small single-use container. Double-dipping is allowed as long as the remaining wax is not reused between clients. Once the waxing procedure is complete, any remaining wax, as well as the single-use container, must be discarded.

(c) All used wax that has been in contact with a client's skin shall not be reused under any circumstances and shall be disposed of immediately after each use.

(d) All wax pots shall be cleaned and disinfected according to manufacturer's recommendations. No applicators shall be left standing in wax at any time.

(4) **Chemical use and storage.**

(a) When administering services to a client that involve the use of chemicals or chemical compounds, all licensees must follow safety procedures according to manufacturer's instructions or material safety data sheets (MSDSs), ((~~which~~)) to prevent injury to the client's person or clothing.

(b) ((~~Licensees using chemicals or chemical compounds in providing services to clients must store the chemicals so as to prevent fire, explosion, or bodily harm~~)) Salon shops and schools shall have in the immediate working area access to all material safety data sheets (MSDSs) provided by manufacturers for any chemical products used.

((~~(i)~~)) (c) Flammable chemicals must be stored away from potential sources of ignition.

((~~(ii)~~)) (d) Chemicals which could interact in a hazardous manner such as oxidizers, catalysts, and solvents, must be stored per manufacturer's instruction.

((~~(iii)~~)) (e) Licensees using chemicals or chemical compounds in providing services to clients must store the chemicals so as to prevent fire, explosion, or bodily harm. All chemicals must be stored in accordance with the manufacturer's directions.

((~~(6)~~)) (5) **Refuse and waste material.**

(a) All ((~~chemical, flammable, toxic or otherwise harmful waste material must be deposited in a closed container at the conclusion of each service on a client and removed from the premises to a fire-retardant container at the close of each business day.~~

~~(b) All nonchemical waste related to the performance of services must be deposited in a covered container to avoid the potential for cross contamination through release of or exposure to infectious waste materials.~~

~~(c) All waste unrelated to the performance of services must be deposited in a covered waste disposal container. Containers located in the reception or office area, which do not contain waste relating to the performance of services, are exempt from having covers.~~

~~(d) Outer surfaces of waste disposal containers must be kept clean~~)) waste must be deposited in a covered waste disposal container. Containers located in the reception or office area, which do not contain waste relating to the performance of services, are exempt from having covers.

(b) All chemical, flammable, toxic or otherwise harmful waste material must be disposed of in the manner required by local hazardous waste management regulations.

(c) All waste containers must be emptied when full and at the end of each day and be kept clean by sanitizing or using plastic liners. Outer surfaces of waste disposal containers must be kept clean.

(((~~(e)~~))) (d) Any disposable sharp objects that come in contact with blood or other body fluids must be disposed of in a sealable rigid (puncture proof) labeled container that is strong enough to protect the licensee, client and others from accidental cuts or puncture wounds that could happen during the disposal process.

(((~~(f)~~))) (e) Licensees must have ((~~both sealable plastic bags and~~)) sealable rigid containers available for use at all times services are being performed.

(((~~(7)~~))) (6) **Sanitation/disinfecting.**

(a) All tools and implements((~~, including; reusable skin cleaning sponges and skin care bowls,~~)) must be sanitized and disinfected or disposed of after service on each client. Tools and implements not approved for disinfection and reuse under manufacturers' specifications must be given to the client or discarded after service on each client. These tools and implements include, but are not limited to: Nail files, cosmetic make-up sponges, buffer blocks, sanding bands, toe separators or sleeves, orangewood sticks, and disposable nail bits. Presence of used articles in the work area will be considered prima facie evidence of reuse.

(b) When used according to the manufacturer's instructions, each of the following is an approved method of disinfecting tools and implements after they are cleaned of debris:

(i) Complete immersion or spray with an EPA-registered hospital grade disinfectant solution of the object(s) or portion(s) thereof to be disinfected; or

(ii) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or

(iii) Dry heat sterilizer, registered and listed with the U.S. Food and Drug Administration, or Canadian certification.

(c) All sanitized and disinfected tools and implements must be ((~~kept~~)) stored in a closed nonairtight container or UV sanitizer ((~~or closed nonairtight container~~)). UV sanitizers shall be used only for clean storage of already sanitized and disinfected tools and implements.

(d) All disinfecting solutions and/or agents must be kept at manufacturer recommended strengths to maintain effectiveness, be free from foreign material and be available for immediate use at all times the location is open for business.

(e) ((~~Nail files, cosmetic make-up sponges, buffer blocks, sanding bands, toe separators or sleeves, orangewood~~

~~sticks, and disposable nail bits which have not been approved for disinfection and reuse, must be given to the client or discarded after service on each client. Presence of these articles in the work area will be prima facie evidence of reuse.~~

~~(8)~~)) All articles, which come in direct contact with the client's skin that cannot be sanitized and disinfected, must be disposed of in a waste receptacle immediately after service on each client. Presence of these articles in the work area will be considered prima facie evidence of reuse.

(f) Disposable protective gloves must be disposed of after service on each client.

(7) **Disinfecting nonelectrical tools and implements.**

(a) All tools and implements used within a field of practice must be disinfected after service on each client in the following order:

(i) **Remove** all hair and/or foreign material;

(ii) **Clean** thoroughly with soap or detergent and water;

(iii) **Rinse** thoroughly with clear, clean water; and

(iv) **Disinfect** with an EPA-registered hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, ((~~and use~~)) used according to manufacturer's instructions or in a steam sterilizer or dry heat sanitizer under subsection (6)(b)(ii) and (iii) of this section.

(b) Tools and implements without sharp edges or points, including but not limited to combs, brushes, rollers, rods, etc., must be totally immersed in an EPA registered hospital grade disinfectant according to manufacturer's instructions.

(c) Clips or other tools and instruments must not be placed in mouths, pockets or unsanitized holders.

(d) A client's personal tools and instruments must not be used in the establishment except when prescribed by a physician.

(((~~9~~))) (8) **Disinfecting electrical tools and implements.** Electrical tools and implements must be disinfected after service on each client in the following order:

(a) Remove hair and/or foreign matter;

(b) Disinfect with an EPA hospital grade disinfectant specifically made for electrical tools and implements.

(((~~10~~))) (9) **Storage of tools and implements.**

(a) New and/or sanitized and disinfected tools and implements must be stored separately from all other((~~s~~)) items.

(b) Used tools and implements must be stored in a labeled drawer or container at the work station.

(c) Roller storage receptacles and contents must be sanitized and disinfected and free of foreign material.

(((~~c~~))) (d) Storage cabinets, work stations and storage drawers for sanitized and disinfected tools and implements must be clean, free of debris and used only for sanitized and disinfected tools and implements.

~~(((d) Storage of used tools and implements that are not in a labeled drawer or container is prohibited at the workstation.~~

~~(11)~~)) (10) **Cleaning and disinfecting ((~~footspas~~)) foot spas.**

(a) As used in this section, "((~~footspa~~)) foot spa" or "spa" is defined as any basin using circulating water.

(b) After ((~~service upon each client, each footspa must be cleaned and disinfected in the following order:~~

~~(i) All water must be drained and all debris must be removed from the spa basin.~~

~~(ii) The spa basin must be cleaned with soap or detergent and water.~~

~~(iii) The spa basin must be disinfected with an EPA-registered hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, which must be used according to manufacturer's instructions.~~

~~(iv) The spa basin must be wiped dry with a clean towel.~~

~~(c) At the end of each day, each footspa must be cleaned and disinfected in the following order:~~

~~(i) The screen must be removed, all debris trapped behind the screen must be removed, and the screen and the inlet must be washed with soap or detergent and water.~~

~~(ii) Before replacing the screen, the screen must be totally immersed in an EPA registered hospital grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, which must be used according to the manufacturer's instructions.~~

~~(iii) The spa system must be flushed with low sudsing soap and warm water for at least ten minutes, after which the spa must be rinsed and drained.~~

~~(d) Every other week (biweekly), after cleaning and disinfecting as provided in (c) of this subsection, each footspa must be cleaned and disinfected in the following order:~~

~~(i) The spa basin must be filled completely with water and one teaspoon of 5.25% bleach for each one gallon of water, or a solution of sodium hypochlorite of approximately 50 ppm used according to manufacturer's instructions.~~

~~(ii) The spa system must be flushed with the bleach and water solution, or sodium hypochlorite solution, for five to ten minutes and allowed to sit for six to ten hours.~~

~~(iii) The spa system must be drained and flushed with water before service upon a client.~~)) each client:

(i) **Drain** the water from the foot spa basin and remove any visible debris;

(ii) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain;

(iii) **Disinfect** the surface with an EPA registered hospital grade disinfectant according to the manufacturer's directions on the label. Surfaces must remain wet with disinfectant for ten minutes or the time stated on the label.

(c) Nightly:

(i) For whirlpool foot spas, air-jet basins, "pipeless" foot spas and other circulating spas:

(A) **Drain** the water from the foot spa basin or bowl and remove any visible debris.

(B) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain.

(C) **Disinfect -** Fill the basin with clean water, adding the appropriate amount of EPA registered hospital grade disinfectant. Turn the unit on to circulate the disinfectant for the entire contact time according to the manufacturer's directions on the label.

(D) **Drain and rinse** the basin with clean water and allow to **air dry.**

(ii) For foot spas with filter screens, inlet jets and other removable parts that require special attention during the disinfecting process.

(A) **Drain** the water from the foot spa basin and remove any visible debris.

(B) **Remove** the filter screen, inlet jets and all other removable parts from the basin and clean out any debris trapped behind or in them.

(C) **Scrub** the removable parts using a brush and soap or detergent.

(D) **Rinse** the removed parts with clean water and replace them in the basin.

(E) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain.

(F) **Disinfect -** Fill the basin with clean water, adding the appropriate amount of EPA registered hospital grade disinfectant. Turn the unit on to circulate the disinfectant for the entire contact time according to the manufacturer's directions on the label.

(G) **Drain and rinse** the basin with clean water and allow to **air dry.**

(d) Weekly: Once per week after the nightly cleaning and disinfecting as provided in (c) of this subsection, each foot spa must be cleaned and disinfected in the following order:

(i) **Fill** the spa basin completely with water and one teaspoon of 5.25% bleach for each gallon of water, or a solution of sodium hypochlorite of approximately 50 ppm used according to manufacturer's instructions.

(ii) **Flush** the spa system with the bleach and water solution or sodium hypochlorite solution for five to ten minutes and allow to sit for six to ten hours.

(iii) **Drain** the spa system and flush with water before service on a client.

(e) A record must be made of the date and time of each cleaning and disinfecting as required by (c) and (d) of this subsection, and indicate whether the cleaning was a daily or ((~~biweekly~~)) weekly cleaning. This record must be made at the time of cleaning and disinfecting. Cleaning and disinfecting records must be made available upon request by either a client or a department representative.

(((~~12~~))) (f) For simple basins and reusable liners (no circulation):

(i) **Drain** the basin and remove any visible debris.

(ii) **Scrub** the basin with a clean brush and soap or detergent following manufacturer's instructions.

(iii) **Rinse** the basin with clean water and drain.

(iv) **Disinfect** basin surfaces with an EPA registered hospital grade disinfectant following manufacturer's instructions. Surfaces must remain wet with disinfectant for ten minutes or the contact time stated on the label.

(v) **Drain and rinse** the basin with clean water and allow to **air dry.**

(11) **Headrests, shampoo bowls, and treatment tables.**

(a) The headrest of chairs must be sanitized((~~,~~)) and disinfected ((~~and covered with a clean towel or paper sheet~~)) after service on each client.

(b) Shampoo trays and bowls must be sanitized and disinfected after each shampoo, kept in good repair and in a sanitary condition at all times.

(c) All treatment tables must be sanitized, disinfected and covered with sanitary linens or examination paper, which must be changed after each service on a client.

(((~~13~~))) (12) **Walls, floors, and ceilings.** Walls, floors, and ceilings must be sanitized and disinfected as necessary and kept clean and free of excessive spots, mildew, condensation, or peeling paint.

(((~~14) Liquids, creams, powders and cosmetics.~~

~~(a) All liquids, creams, and other cosmetic preparations must be kept in clean and closed containers.~~

~~(b) All bottles and containers must be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances must be additionally and distinctly marked as such.~~

~~(c) When only a portion of a cosmetic preparation is to be used on a client, it must be removed from the container in such a way as not to contaminate the remaining portion.~~

~~(d) Pencil cosmetics must be sharpened before each use. Sanitize and disinfect or dispose of the sharpener after service on each client.~~

~~(15)~~))) (13) **Towels or linens.** Clean towels or linens must be used for each client in cosmetology, esthetics, manicuring and barbering services. Towels and linens must be sanitized and disinfected ((~~with a product that is labeled 10% bleach solution or the equivalent~~)) by washing with hot water, laundry detergent and chlorine bleach used according to manufacturer's instructions for disinfection purposes.

(((~~16~~))) (14) **Prohibited hazardous substances((~~,~~)) - Use of products.** No establishment or school may have on the premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration for use in cosmetic products. Use of 100% liquid methyl methacrylate monomer and methylene chloride products are prohibited. No product must be used in a manner that is disapproved by the U.S. Food and Drug Administration.

(((~~17~~))) (15) **Prohibited instruments or practices.**

(((~~a~~))) Any razor-edged tool, which is designed to remove calluses.

(((~~b) Neck and nail dusters to remove debris from client.~~

~~(18)~~))) (16) **Blood spills.** If there is a blood spill or exposure to other body fluids during a service, licensees and students must stop and proceed in the following order:

(a) Stop service;

(b) Put on gloves;

(((~~b~~))) (c) Clean the wound with an antiseptic solution;

(((~~c~~))) (d) Cover the wound with a sterile bandage;

(((~~d~~))) (e) If the wound is on a licensee hand in an area that can be covered by a glove or finger cover, the licensee must wear a clean, fluid proof protective glove or finger cover. If the wound is on the client, the licensee providing service to the client must wear gloves on both hands((~~,~~));

(f) Discard all contaminated objects. Contaminated objects shall be placed in a sealed plastic bag labeled "biohazard" and that bag must be placed inside another plastic bag and discarded;

(g) All equipment, tools and instruments that have come into contact with blood or other body fluids must be sanitized and disinfected or discarded. ((~~Blood-contaminated tissue or cotton or other blood-contaminated material must be placed in a sealed, labeled plastic bag and that plastic bag must be placed into another plastic bag (double bagged), and discarded. Licensees must wear gloves if there is contact with blood or other body fluids, and must sanitize and disinfect or discard gloves and wash hands.~~

~~(19)~~)) (h) Remove gloves; and

(i) Wash hands with soap and water before returning to the service.

(17) **First-aid kit.** The establishment must have a first-aid kit that contains at a minimum:

• Small bandages((~~,~~));

• Gauze((~~,~~));

• Antiseptic((~~,~~)); and

• A blood spill kit that contains:

- Disposable bags((~~,~~));

- Gloves ((~~and hazardous waste stickers.~~

~~(20) **Medical devices.** Any medical device listed with the U.S. Food and Drug Administration as a "prescriptive device" must be used within the scope of RCW 18.16.020(12) under the delegation and supervision of a licensed physician or physician's assistant or an advanced registered nurse practitioner (ARNP) as defined under chapters 18.71, 18.57, 18.71A, and 18.57A RCW, and RCW 18.79.050~~)); and

- Biohazard labels.

(((~~(21)~~))) (18) **Restroom.**

(a) All locations must have a restroom available. The restroom must be located on the premises or in adjoining premises, which is reasonably accessible.

(b) All restrooms located on the premises must be kept clean, sanitary and in proper working order at all times.

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-115 Reciprocity—Persons licensed in other jurisdictions. The department shall issue a license to any person who is properly licensed in any state, territory, or possession of the United States, or foreign country if the applicant submits:

(1) Application;

(2) Fee;

(3) Proof that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, master esthetician, instructor, or the equivalent in that jurisdiction;

(4) Provides proof that he or she has passed an examination approved by the director.

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-120 Written and performance examinations. (1) The department shall administer or approve the administration of a written and performance license examination. The department may approve written or performance examinations given by department-approved examination providers.

(2) The written and performance examinations for cosmetologist, barber, manicurist ((~~and~~)), esthetician, and master esthetician shall reasonably measure the applicant's knowledge of safe and sanitary practice.

(3) The written and performance examinations for instructors shall be constructed to measure the applicant's knowledge of lesson planning and teaching techniques.

(4) In order to be eligible for licensure, a license applicant must pass both the written and performance examinations in the practice for which they are applying.

(5) The minimum passing score for both the written and performance examinations in all practices is a scaled score of 75.

(6) Examination results expire three years from the date of the examination. Examination results that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

AMENDATORY SECTION (Amending WSR 09-24-062, filed 11/25/09, effective 1/1/10)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	**Fee**
Cosmetologist:	
License application	$25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
((~~Certification~~	~~25.00~~))
Instructor:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
((~~Certification~~	~~25.00~~))
Manicurist:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate	15.00
((~~Certification~~	~~25.00~~))
Esthetician:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate	15.00
((~~Certification~~	~~25.00~~))

Title of Fee	Fee
Barber:	
License Application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
((~~Certification~~	~~25.00~~))
School:	
License application	300.00
Renewal (one-year license)	300.00
Late renewal penalty	175.00
Duplicate	15.00
((~~Curriculum review~~	~~15.00~~))
Salon/shop:	
License application	110.00
Renewal (one-year license)	110.00
Late renewal penalty	50.00
Duplicate license	15.00
Mobile unit:	
License application	110.00
Renewal (one-year license)	110.00
Late renewal penalty	50.00
Duplicate license	15.00
Personal services:	
License application	110.00
Renewal (one-year license)	110.00
Late renewal penalty	50.00
Duplicate license	15.00

AMENDATORY SECTION (Amending WSR 07-14-066, filed 6/29/07, effective 8/1/07)

WAC 308-20-550 Posting of required licenses, registrations, permits, notice to consumers, and current inspection form. (1) Licenses, the consumer notice required by chapter 18.16 RCW, the apprentice salon/shop notice as defined in WAC 308-20-555, and the most current inspection form shall be posted in direct public view.

(2) Original operator licenses with an attached current photograph shall be posted in clear view of clients in the operator's work station.

(3) Original instructor licenses with an attached current photograph shall be posted in clear view of the public.

(4) Original school, instructor, salon/shop, and mobile unit licenses shall be ((~~displayed~~)) posted in the reception area.

(((~~4~~))) (5) Personal services shall display their licenses and consumer notice in direct view of their client.

(((~~5~~))) (6) A pocket identification card may not be used in lieu of an original license.

(((~~6~~))) (7) No license which has expired or become invalid for any reason shall be displayed by any operator, instructor, or business in connection with the practice of cosmetology, barbering, esthetics, or manicuring. Any license so displayed shall be surrendered to a department representative upon its request.

(((~~7~~))) (8) Licenses issued by another state, territory, or foreign country shall not be displayed in any salon/shop.

(((~~8~~))) (9) A receipt, issued by the department of licensing, showing the application for a duplicate license may be used if the original has been lost, stolen, or otherwise destroyed until the duplicate license is received.

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-572 Inspection of schools. (1) Prior to approval of application or renewal for licensure, any person wishing to operate a school shall, meet the requirements in RCW 18.16.140; submit to an inspection of the site; and provide the following:

(a) Name of owner and current mailing and physical address if solely owned.

(b) Names of partners and current mailing and physical addresses if a partnership.

(c) Names of corporate officers and current mailing and physical addresses if a corporation.

(d) Name of the school, complete mailing address, and physical address.

(e) Days and hours of operation of the school.

(f) A signed fire inspection report from the local fire authority indicating all standards and requirements have been met.

(((~~f~~))) (g) Listing of all instructors including license number and expiration date.

(((~~g~~))) (h) Sample of all monthly student reports.

(((~~h~~))) (i) Sample of student packet to be provided to student at enrollment that must contain, but is not limited to, a copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies.

(((~~i~~))) (j) Floor plan drawn to scale showing placement of all equipment; areas designated for the clinic, dispensary, classroom, office and restrooms; and identify student capacity. The floor plan shall include the square footage of the school.

(2) All locations shall pass a ((~~preinspection~~)) prelicensing inspection by a department representative by meeting the following requirements:

(a) ((~~An~~)) A permanent entrance sign designating the name of the school.

(b) A time clock and time cards or other equipment necessary for verification of daily student attendance and hours earned.

(c) An adequate supply of hot and cold running water shall be available for school operation.

(d) Textbooks/teaching materials - Textbooks shall be ((~~provided~~)) required for each student in attendance.

(e) Lavatories with hot and cold running water, single-use hand soap and disposable or single-use hand drying towels or an automatic hand dryer.

(f) When a salon and school are under the same ownership in the same building, separate operation of the salon and the school must be maintained. Common reception areas and restrooms will be allowed; however, the salon and school must have separate entrances and meet location requirements identified in chapter 18.16 RCW.

(g) Emergency evacuation plans posted for staff and students.

(h) There must be a sufficient number of tables/desks and chairs to accommodate the registered students.

(i) Department of licensing safety and sanitation guidelines posted in all dispensaries and classrooms.

(j) Supplemental training space must be preapproved by the department.

(i) The supplemental training space must be located within two miles of the original facility of the licensed school.

((~~These facilities must~~)) (ii) A duplicate copy of the school license shall be posted at the supplemental training space.

(iii) A duplicate copy of each instructor's license with a current photograph shall be posted at the supplemental training space.

(iv) The supplemental training space shall bear the same name as the original licensed school ((~~and it~~)).

(v) Supplemental training space is only approved for theory and/or practice rooms. No clinic services shall be provided in ((~~additional facilities~~)) supplemental training space.

(k) Schools must post a sign that contains the words "work done exclusively by students" or "all work performed by students under supervision of a licensed instructor" in the reception or clinic area.

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-575 School license renewal process. (1) Each school license shall be renewed on a yearly basis. In addition to the site inspection, the renewal request shall be accompanied by:

((~~(1)~~)) (a) Certification of annual gross tuition and surety bond in an amount equal to ten percent of the annual gross tuition, but not less than ten thousand dollars or more than fifty thousand dollars((~~.~~));

((~~(2) Changes in~~)) (b) Current copies of curriculum, catalogs, and brochures((~~.~~));

((~~(3)~~)) (c) Current list of instructor((~~s on forms provided by the department.~~)) names and license numbers;

(d) Updated school information on forms provided by the department including the days and hours of operation of the school; and

((~~(4)~~)) (e) Verification of current student/instructor ratio.

((~~(5)~~)) (2) Licenses must be renewed on or before the expiration date. Failure to renew the license by the expiration date shall result in a penalty.

((~~(6)~~)) (3) Failure to receive a notice of license renewal from the department does not constitute cause for failure to renew.

WSR 13-20-139

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 2, 2013, 10:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-147.

Title of Rule and Other Identifying Information: WAC 308-96A-545 Gold Star license plate.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on November 13, 2013, at 3:00 p.m.

Date of Intended Adoption: November 14, 2013.

Submit Written Comments to: Cathie Jelvik, P.O. Box 9909, Olympia, WA 98507-8500, e-mail cjelvik@dol.wa.gov, fax (360) 570-7892, by November 12, 2013.

Assistance for Persons with Disabilities: Contact Cathie Jelvik by November 12, 2013, TTY (360) 902-3812 or (360) 902-3811.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 308-96A-545 to update eligibility of applicants for Gold Star special license plates that honor fallen heroes.

Reasons Supporting Proposal: Recent legislation (SB 5161, section 1, chapter 137, Laws of 2013) amended RCW 46.18.245 to expand the list of eligible applicants for Gold Star special license plates. The amendments to WAC 308-96A-545 incorporate these changes.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: RCW 46.18.245.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cathie Jelvik, Olympia, (360) 902-3812; Implementation and Enforcement: Toni Wilson, Olympia, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025 (4)(e).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 2, 2013
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-22-066, filed 11/4/08, effective 12/5/08)

WAC 308-96A-545 Gold Star ((~~Parent~~)) license plate. (1) **What is a Gold Star ((~~Parent~~)) license plate?** The Gold Star ((~~Parent~~)) license plate ((~~was created by the legislature to~~)) recognizes the ((~~parents~~)) eligible family members of United States armed forces members who have died while in service to their country or as a result of such service.

(2) **Who qualifies as ((~~a parent~~)) an eligible family member of a member of the United States armed forces?** ((~~The term "parent," as defined by the Washington state department of veterans affairs, (WDVA) includes:~~

~~(a) Birth mother;~~

~~(b) Birth father;~~

~~(c) Stepmother;~~

~~(d) Stepfather;~~

~~(e) Mother through adoption;~~

~~(f) Father through adoption; and~~

~~(g) Adults who fulfilled the parental role including foster parents and kinship care providers or caretaker relative. (Documentation required.)~~

~~(3) **Who can purchase a Gold Star Parent plate?** A resident of this state and a registered owner of a motorized vehicle who is a parent of a member of the United States armed forces who has died while in service to their country or as a result of such service. The parent must be certified by the WDVA.~~

~~(4)~~)) Eligible family members are listed in RCW 46.18.245. For purposes of this section, a widow or widower includes the surviving member of a registered domestic partnership.

(3) **What is required to purchase a Gold Star ((~~Parent~~)) plate?** A copy of the certification letter to a qualifying widow, widower, parent, or child provided by the Washington state department of veterans affairs (WDVA) is required. The letter will be used in ((~~lieu of~~)) addition to a special plate application to purchase the plate. No other documentation is required.

(((~~5~~))) (4) **Can a Gold Star ((~~Parent~~)) plate be transferred to a new owner?** No. The plate may only be transferred to a vehicle owned by the same registered owner who was certified as a qualifying widow, widower, parent, or child by WDVA. The plate cannot be transferred to a different registered owner. If the widow, widower, parent, or child transfers the plate to a new car registered to them, they are required to pay the plate transfer fee.

(((~~6) **What vehicles qualify to display a Gold Star Parent plate?** Motorized vehicles required to display one or two license plates.~~

~~(7)~~)) (5) **What fees are required to purchase the plate?** There is no special plate fee or special plate renewal fee for the Gold Star ((~~Parent~~)) plate. The registered owner must pay all licensing and filing fees.

(((~~8~~))) (6) **Is the plate subject to the mandatory plate replacement?** Yes, the plate must be replaced every seven years due to mandatory plate replacement requirements. Customers will not be charged the plate replacement fees, or the fee to keep their same number.

(((~~9~~))) (7) **Can a Gold Star ((~~Parent~~)) plate background be personalized?** Yes. A Gold Star ((~~Parent~~)) plate background can be personalized; however, the customer is required to pay all fees associated with a personalized plate original purchase or renewal.

(((~~10~~))) (8) **Is a commercial vehicle eligible for a Gold Star ((~~Parent~~)) plate as long as it is in the name of the qualifying widow, widower, parent, or child and not a business name?** Yes.

(((~~11~~))) (9) **Can a prorated vehicle display a Gold Star ((~~Parent~~)) plate if the vehicle is under the name of the widow, widower, parent, or child that is eligible for this plate?** No per chapter 46.87 RCW.

WSR 13-20-141
PROPOSED RULES
OFFICE OF INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-13—Filed October 2, 2013, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-080.

Title of Rule and Other Identifying Information: Market transition of health benefit plans for 2014.

Hearing Location(s): Training Room, T-120, 5000 Capitol Way South, Tumwater, WA, on November 6, 2013, at 10:00 a.m.

Date of Intended Adoption: November 8, 2013.

Submit Written Comments to: Meg L. Jones, P.O. Box 40258, Olympia, WA 98504, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 6, 2013.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 5, 2013, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Beginning January 1, 2014, newly applicable federal health plan form and rating requirements for individual and small group plans require discontinuation and replacement of nongrandfathered health plans. The requirements affect not just the commercial individual and small group market, but also coverage issued through associations or member governed groups to individual and small group purchasers. The proposed rules explain the commissioner's requirements for transitioning the market from current coverage to the required replacement coverage.

Reasons Supporting Proposal: The proposed rules are required for an orderly market transition from noncompliant plans that must be discontinued, to replacement plans that must be in place by the next renewal date for each group or individual after January 1, 2014. Without the transition guidance in these regulations, issuers would begin wholesale replacement of plans, rather than being able to evaluate and transition groups at renewal. In order to meet the discontinuation and replacement timelines applicable under RCW 48.43.035, notices must be issued not later than ninety days before renewal. In addition, for plans offered to association members, specific guidance on how the federally preempted small group exemption does or does not apply is required in order for issuers to ensure that plans are correctly rated, and

that the forms are in compliance with federal law. Of particular concern is that health plan issuers will adjust renewal dates to lengthen the period of time enrollees are on noncompliant plans after January 1, 2014. The proposed rules also implement 45 C.F.R. 147.140.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.700, 48.43.715, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.43.035, 48.43.038, 45 C.F.R. 147.140.

Rule is necessary because of federal law, 45 C.F.R. 150.101(2).

Name of Proponent: Office of the insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Meg Jones, P.O. Box 40258, Olympia, WA 98504, (360) 725-7170; Implementation: Leslie Krier, P.O. Box 40257, Olympia, WA 98504, (360) 725-7216; and Enforcement: AnnaLisa Gellerman, P.O. Box 40257, Olympia, WA 98504, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. None of the entities affected meet the definition of small business or school district.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meg Jones, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7170, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 2, 2013
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-170-950 Grandfathered health plan status. (1) An issuer must retain in its files all necessary documentation to support its determination that a purchaser's plan is grandfathered. The information must be sufficient to demonstrate that the issuer's determination of grandfathered status is credible. For purposes of this section, "grandfathered plan" means a health plan that meets the requirements of this section and as defined in RCW 48.43.005.

(2) An issuer's documentation supporting grandfathered plan designation must be made available to the commissioner or the U.S. Department of Health and Human Services for review and examination upon request, and retained for a period of not less than ten years. For each plan, the records supporting the issuer's determination must also be made available to participants and beneficiaries upon request.

(3) An issuer's documentation must establish for each grandfathered plan that since March 23, 2010:

(a) The plan was not amended to eliminate all or substantially all the benefits to diagnose or treat a particular condition. A list of all plan benefit amendments that eliminate benefits and the date of the amendment is the minimum level of acceptable documentation that must be available to support this criteria;

(b) The cost-sharing percentage requirements, if applicable, for the plan were not increased more than three percent after March 23, 2010. A list of each cost-sharing percentage that has been in place for a grandfathered group's plan, beginning with the cost-sharing percentage on March 23, 2010, is the minimum level of acceptable documentation that must be available to support this criteria;

(c) The fixed cost-sharing requirements other than copayments did not increase by a total percentage measured from March 23, 2010, to the date of change that is more than the sum of medical inflation plus fifteen percent. A list of the fixed cost-sharing requirements other than copayments that apply to a grandfathered group's plan beginning on March 23, 2010, and a record of any increase, the date and the amount of the increase, is the minimum level of documentation that must be available to support this criteria;

(d) Copayments did not increase by an amount that exceeds the greater of:

(i) A total percentage measured from March 23, 2010, to the date of change that is more than the sum of medical inflation plus fifteen percent; or

(ii) Five dollars, adjusted annually for medical inflation measured from March 23, 2010. A record of all copayments beginning on March 23, 2010, applicable to a grandfathered group plan, and any changes in the copayment since that date is the minimum level of documentation that must be available to support this criterion.

(e) The employer's contribution rate toward any tier of coverage for any class of similarly situated individuals did not decrease by more than five percent below the contribution rate in place on March 23, 2010, expressed as a percentage of the total cost of coverage. The total cost of coverage must be determined using the methodology for determining applicable COBRA premiums. If the employer's contribution rate is based on a formula such as hours worked, a decrease of more than five percent in the employer's contributions under the formula will cause the plan to lose grandfathered status. The issuer must retain a record of the employer's contribution rate for each tier of coverage, and any changes in that contribution rate, beginning March 23, 2010, as the minimum level of documentation that must be available to support this criteria;

(f) On or after March 23, 2010, the plan was not amended to impose an overall annual limit on the dollar value of benefits that was not in the applicable plan documents on March 23, 2010;

(g) On or after March 23, 2010, the plan was not amended to adopt an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit for all benefits that was in effect on March 23, 2010; and

(h) The plan was not amended to decrease the dollar value of the annual limit, regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits.

(4) In addition to documentation establishing that none of the prohibited changes described in subsection (3) of this section have occurred, an issuer must also make available to the commissioner upon request the following information for each grandfathered plan:

(a) Enrollment records of new employees and members added to the plan after March 23, 2010;

(b) Underwriting rules and guidelines applied to enrollees on or after March 23, 2010; and

(c) Proof of notification to the individual or group of its plan's grandfathered status designation for each year for which the status is claimed.

(5) A change made to a plan before March 23, 2010, but that became effective after March 23, 2010, is permitted without negating a plan's grandfathered status if the change was adopted pursuant to a legally binding contract, state insurance department filing or written plan amendment. If the plan change resulted from a merger, acquisition or similar business action where one of the principal purposes is covering new individuals from the merged or acquired group under a grandfathered health plan, the plan may not be designated as grandfathered.

(6) An issuer may delegate the administrative functions related to documenting or determining grandfathered status designation to a third party. Such delegation does not relieve the issuer of its obligation to ensure that the designation is correctly made, that replacement plans are issued in a timely and compliant manner as required by state or federal law, and that all requisite documentation is kept by the issuer.

(7) If the commissioner determines that an issuer incorrectly designated a group plan as grandfathered, the plan is nongrandfathered, and must be discontinued and replaced with a plan that complies with all relevant market requirements within thirty days. This section does not preclude additional enforcement action.

(8) An issuer must designate whether a plan is grandfathered or nongrandfathered as required by the Washington state system for electronic rate and form filing (SERFF) filing instructions.

NEW SECTION

WAC 284-170-952 Market conduct requirements related to grandfathered status. (1) An issuer may allow a group covered by grandfathered health insurance coverage to add new employees to its health benefit plan, and move employees between benefit options at open enrollment without affecting grandfathered status, as long as the group's plan does not change in any way that triggers the loss of grandfathered status as set forth in 45 C.F.R. 147.140.

(2) An issuer must provide a statement in the plan materials provided to participants or beneficiaries describing the benefits provided under the plan, explaining that the group health plan believes it is a grandfathered health plan within the meaning of Section 1251 of the Affordable Care Act, and include contact information for questions and complaints that conforms to the model notice language found in 45 C.F.R. 147.140.

(3) An issuer must not restrict group eligibility to purchase a nongrandfathered plan offered through an association or member-governed group because the group is not affiliated with or does not participate in the association or member-governed group, unless the association or member-governed group meets one of the requirements of WAC 284-170-958(1).

(4) WAC 284-170-950 through 284-170-958 does not prohibit an issuer from discontinuing a grandfathered plan design and replacing it with a nongrandfathered plan.

(5) An issuer must not limit eligibility based on health status for either grandfathered or nongrandfathered health plans.

NEW SECTION

WAC 284-170-954 Small group coverage market transition requirements. (1) For all nongrandfathered small group plans issued and in effect prior to January 1, 2014, in 2014 issuers must replace issued nongrandfathered small group health benefit plans with health benefit plans approved by the commissioner as follows:

(a) An issuer may elect to withdraw a product pursuant to RCW 48.43.035, and discontinue each health benefit plan in force under that product on the same date, requiring groups to select a replacement plan to be effective on the date of discontinuation; or

(b) An issuer may discontinue a small group's coverage and offer the full range of plans the issuer offers in the small group market as replacement options, to take effect on the small group's renewal date. For small groups covered by nongrandfathered health benefit plans purchased through an association, the requirements of WAC 284-170-955 and 284-170-958 apply;

(c) If an issuer does not have a replacement plan approved by the commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(2) If an issuer selects the replacement option described in subsection (1)(b) of this section, the issuer must provide the small group plan sponsor with written notice of the discontinuation and replacement options not later than ninety days before the renewal date for the small group's coverage. The commissioner may, for good cause shown, permit a shorter notice period for providing the replacement option information to a group. The written notice must contain the following information:

(a) Specific descriptions of the replacement plans for which the small group and its enrollees are eligible, both on or off the health benefit exchange;

(b) Electronic link information to the summary of benefits and explanation of coverage for each replacement plan option;

(c) Contact information to access assistance from the issuer in selecting the replacement plan option or answering enrollee questions about the replacement plans made available to them by their employer.

(3) For either replacement option set forth in subsection (1) of this section, the issuer must provide a separate written notice to each enrollee notifying the enrollee that their small group plan coverage will be discontinued and replaced. The notice must be provided not later than ninety days prior to the discontinuation and replacement date.

(4) If an issuer has electronic mail contact information for the small group plan sponsor or the enrollees, the written notice may be provided electronically. The issuer must be able to document to the commissioner's satisfaction both the content and timing of transmission. The issuer must send written notice by U.S. mail to a sponsor or enrollee for whom the electronic mail message was rejected.

(5) An issuer may offer small groups the option to voluntarily discontinue and replace their coverage prior to their renewal date.

(a) An issuer must not selectively offer early renewal to small groups, but must make this option universally available.

(b) An issuer must not alter or change a small group's renewal date to lengthen the period of time before discontinuation and replacement occurs in 2014. For example, if a small group's renewal date is March 31st of each year, the issuer may not adjust the benefit year in 2013 to effect a renewal date of November 30th.

(6) This section applies to each health benefit plan that provides coverage based on receipt of claims for services, even if the coverage falls under one of the otherwise excepted categories set forth in RCW 48.43.005 (26)(i) and (l). This section does not apply to a health benefit plan that provides per diem or single payment coverage based on a triggering event or diagnosis regardless of the medical necessity of the type or range of services received by an enrollee.

NEW SECTION

WAC 284-170-955 Association health plan compliance with statutory or regulatory changes. (1) An issuer offering plans through an association or member-governed group must implement all new federal or state health plan market requirements when they become effective. Replacement requirements for this section apply based on whether the purchaser is classified as an individual, small group, or large group purchaser. These requirements also apply to member employer groups of less than two or to individual member purchasers.

(2) An issuer providing such plans must discontinue noncompliant plans, and offer replacement plans effective on the renewal date of the master group contract for large groups, and on the group's anniversary renewal date for nongrandfathered small group and individual plans.

(3) If the association is a large group as defined in WAC 284-170-958(1), the same renewal date must apply to all participating employers and individuals, and the replacement coverage must take effect on the same date for each participant. The purchaser's anniversary date must not be used in lieu of this uniform renewal date for purposes of discontinuation and replacement of noncompliant coverage.

(4) If the association is not a large group as defined in WAC 284-170-958(1), and the master group contract and the member group do not have the same renewal date, an issuer must provide notice of the discontinuation and replacement of the plan to the affected association member group or plan sponsor, and each enrollee in the affected member group, ninety days prior to the member's anniversary renewal date.

(5) If an issuer does not have a replacement plan approved by the commissioner to offer in place of a discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(6) For purposes of this section, "purchaser" means the group or individual whose eligibility for the plan is based in whole or in part on membership in the association or member-governed group.

(7) For purposes of this section, the "anniversary renewal date" means the initial or first date on which purchasing group's health benefit plan coverage became effective with the issuer, regardless of whether the issuer is subject to other agreements, contracts or trust documents that establish requirements related to the purchaser's coverage in addition to the health benefit plan.

(8) An issuer must not adjust the master contract renewal or anniversary date to delay or prevent application of any federal or state health plan market requirement.

NEW SECTION

WAC 284-170-958 Transition of plans purchased by association members. (1) An issuer must treat a plan issued to individuals or small groups through an association or member-governed group as a large group plan only if the plan meets one of the following definitions:

(a) Eligibility for the plan is limited to government employees and their dependents;

(b) The group is exempt from this regulation as a multiple employer welfare trust;

(c) The association or member group to whom the plan is issued constitutes an employer under 29 U.S.C. § 1002(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et. seq.), as amended; or

(d) The size of the purchasing group is larger than a small group as defined in RCW 48.43.005.

(2) An issuer must make a good faith effort to ensure that any association or member-governed group to whom it issues a large group plan meets the requirements of subsection (1) of this section prior to submitting its form and rate filings to the commissioner, and prior to issuing such coverage. An issuer may reasonably rely upon an opinion from the U.S. Department of Labor as reasonable proof that the requirements of 29 U.S.C. 1002(5) are met by the association or member-governed group.

(3) For plans offered to association or member-governed groups that do not meet the requirements of subsection (1) of this section, the following specific requirements apply:

(a) An issuer must treat grandfathered plans issued under those purchasing arrangements as a closed pool, and file a single case closed pool rate filing. For purposes of this section, a single case closed pool rate filing means a rate filing which includes the rates and the rate filing information only for the issuer's closed pool enrollees.

(b) For each single case closed pool rate filing, an issuer must file a certification from an officer of the issuer attesting that:

(i) The employer groups covered by the filing joined the association prior to or on March 23, 2010;

(ii) The issuer can establish with documentation in its files that none of the conditions triggering termination of grandfathered status set forth in WAC 284-170-950 or in 45 C.F.R. 2590.715-1251(g) have occurred for any plan members.

(4) An issuer must rate a large group plan issued through an association that meets the definition of subsection (1)(c) of this section based on the overall experience of the entire asso-

ciation, and apply rating factors uniformly to each purchasing entity in the association.

(a) An issuer must not use data or information from a specific group purchaser of the association's health benefit plan to establish rates for that group purchaser. "Data or information" specifically includes specific employer information such as group size, health status, claims experience, participation requirements, and number of employees under COBRA status. Composite rating may not be used to set rates for a large group as described under this subsection unless the composite rates are applied uniformly across the entire large group. For purposes of this section, "composite rating" means the averaged rate issued to a group using the group's demographically specific rating factors.

(b) For a health benefit plan issued to an association, and filed as a single case large group, if the association meets the definition of a large group association in subsection (1)(c) of this section, an issuer must submit with its rate filing evidence or documentation of the association's status as an "employer" under 29 U.S.C.S. 1002(5). The commissioner will accept a letter from the U.S. Department of Labor certifying this status as sufficient documentation.

(5) For each grandfathered plan issued to an association or member governed group under subsection (3) of this section, the issuer must include the following items in its rate filing:

(a) Plan number;

(b) Identification number assigned to each employer group, including employer groups of less than two;

(c) Initial contract or certificate date;

(d) Number of employees for each employer group, pursuant to RCW 48.43.005(11);

(e) Number of enrolled employees for each employer group for the prior calendar year;

(f) Current and proposed rate schedule for each employer group; and

(g) Description of the rating methodology and rate change for each employer group.

(6) WAC 284-43-950 applies for a single case rate closed pool under this section.

NEW SECTION

WAC 284-170-959 Individual coverage market transition requirements. (1) For all nongrandfathered individual health benefit plans issued and in effect prior to January 1, 2014, during 2014 issuers must replace the plans with health benefit plans approved by the commissioner as follows:

(a) An issuer may elect to withdraw a product, pursuant to RCW 48.43.038, and discontinue each health benefit plan in force under that product on the same date, requiring selection of a replacement plan to be effective on the date of discontinuation; or

(b) An issuer may discontinue an individual's coverage and offer the full range of plans the issuer offers in the individual market as replacement options. The replacement coverage must take effect on the individual's renewal date.

(c) If an issuer does not have a replacement plan approved by the commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(2) If an issuer selects the replacement option described in subsection (1)(b) of this section, ninety days before the renewal date for the coverage, the issuer must provide the individual and each enrollee under the health benefit plan with written notice of the discontinuation and replacement options. The commissioner may, for good cause shown, permit a shorter notice period for providing the replacement option information to a group. The written notice must contain the following information:

(a) Specific descriptions of the replacement plans for which the enrollees are eligible, both on or off the health benefit exchange;

(b) Electronic link information to the summary of benefits and explanation of coverage for each replacement plan option;

(c) Contact information for assistance from the issuer in selecting the replacement plan option or answering enrollee questions about the replacement plans;

(d) If a renewal date is later than January 1, 2014, the issuer's ninety day discontinuation and replacement notice must notify the individual and any other enrollees on the plan of the shortened plan year for 2014 under the replacement coverage.

(3) For either replacement option set forth in subsection (1) of this section, the issuer must provide a separate written notice to each enrollee notifying the enrollee that their existing coverage will be discontinued and replaced. The notice must be provided not later than ninety days prior to the discontinuation and replacement date.

(4) If an issuer has electronic mail contact information for the enrollees, the notice may be provided electronically. The issuer must be able to document to the commissioner's satisfaction both the content and timing of transmission. The issuer must send written notice by U.S. mail to an enrollee for whom the electronic mail message was rejected.

(5) This section applies to each health benefit plan that provides coverage based on receipt of claims for services, even if the coverage falls under one of the otherwise excepted categories set forth in RCW 48.43.005 (26)(i) and (l). This section does not apply to a health benefit plan that provides per diem or single payment coverage based on a triggering event or diagnosis regardless of the medical necessity of the type or range of services received by an enrollee.

(6) Prior to September 30, 2013, and between September 1st and September 30th for each year thereafter, an issuer must provide written notice to each enrollee under an individual health benefit plan of the availability of health benefit exchange coverage, and contact information for the health benefit exchange.

WSR 13-20-142
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed October 2, 2013, 10:35 a.m.]

Supplemental notice to WSR 13-14-089.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: Based on stakeholders' comments/suggestions, the agency has redrafted the proposal for WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange.

The agency is also withdrawing the following proposals: WAC 182-526-0100 Expedited hearings and 182-526-0218 The authority of a review judge when conducting a hearing as a presiding officer.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreet DirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on November 5, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 6, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on November 5, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 28, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule amendment is necessary for implementation of the Affordable Care Act on January 1, 2014. HCA is establishing a process for coordinating appeals with the Washington health benefits exchange (HBE).

Reasons Supporting Proposal: See Purpose statement.

Statutory Authority for Adoption: RCW 41.05.021; 42 C.F.R. § 431, 435, and 457; 45 C.F.R. § 155.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148).

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Annette Schuffenhauer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1254.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

October 1, 2013
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health (WAH) when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request a WAH hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 45504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By e-mail; or

(f) By any other commonly available electronic means.

(3) When an applicant or recipient appeals an HBE determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions with HBE and also requests a hearing with the health care authority related to WAH eligibility, the ALJ will not require the applicant or recipient to submit information to the ALJ that the applicant or recipient previously submitted to HBE.

(4) If an applicant or recipient submits to HBE a request for a hearing related to WAH eligibility, the ALJ will accept the date HBE received the request for the hearing as the date filed for the purposes of timeliness standards and will treat it as a valid hearing request.

(5) If the applicant or recipient appeals only the determination related to WAH eligibility, subsection (3) of this section does not apply.

WSR 13-20-147
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 2, 2013, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-066 on March 6, 2013.

Title of Rule and Other Identifying Information: This rule making involves commercial shellfish dive fishery rules. The existing WAC sections involved in this project are WAC 220-52-069 Scallop fishery—Puget Sound, 220-52-071 Sea cucumbers, and 220-52-073 Sea urchins.

The department also proposes two new WAC sections as part of this project to define terms: WAC 220-16-101 Definitions—Shellfish dive gear and 220-16-102 Definitions—Hand held tool.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on November 8-9, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after December 6, 2013.

Submit Written Comments to: Joanna Eide, Enforcement Program, 600 Capitol Way North, Olympia, WA 98501, e-mail Joanna.Eide@dfw.wa.gov, fax (360) 902-2155, by October 31, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by October 31, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to commercial shellfish dive fishery rules to prohibit certain gear types on commercial shellfish harvest vessels will make it more difficult for people to illegally harvest geoducks under the guise of participating in lawful shellfish dive fisheries. The department proposes amending commercial scallop, sea cucumber, and sea urchin fishery rules and proposes two new definitions for dive fishery gear. Improved definitions for gear types and uniform season-opening and closing dates will increase rule clarity and promote resource conservation. Allowing the director to set sea urchin size limits by emergency rule will also facilitate resource management. Technical changes to rule titles, language, and structure will increase the rules' intelligibility, functionality, and efficiency.

Reasons Supporting Proposal: The Washington department of fish and wildlife (WDFW) needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increased conservation and availability of resources, clarity for stakeholders and the department, and enforceability of the rules.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.15.045 [77.12.045], and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2403; Implementation: Captain Mike Cenci, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2938; and Enforcement: Chief Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: This proposed rule change involve[s] harvest requirements for small businesses engaged in commercial shellfish dive fisheries, specifically scallop, sea cucumber, and sea urchin dive fisheries. The changes clarify gear requirements and restrictions, create definitions for gear types, correct and provide statute references, improve the structure of the rules, and clarify harvest restrictions and requirements. The rule changes also include provisions that prohibit the possession of geoduck harvest gear aboard vessels engaged in scallop, sea cucumber, and sea urchin dive fisheries to curb illegal geoduck harvest during those fisheries. Small businesses engaged in scallop, sea cucumber, and sea urchin fisheries must comply with the rule requirements when engaging in these fisheries.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: There are no professional service requirements for a small business to comply with the requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The costs of compliance with the provisions within the proposal may be in employee/owner working time, but any costs will be negligible. Costs will be negligible because the underlying requirements remain largely unchanged and are simply restructured and clarified, and it will not be difficult for small businesses to comply with the new and clearer prohibition on geoduck gear on vessels engaging in scallop, sea cucumber, and sea urchin fisheries. Additionally, geoduck gear and dive fishery gear are more clearly defined which will make the requirements easier for small businesses to comply with.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. Compliance with the changes to department requirements in this rule making will not cause businesses to lose sales or revenue. Most of the changes are technical and do not change or increase requirements for small businesses. The changes clarify preexisting requirements and prohibitions on geoduck gear during these dive fisheries and correct references.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

The costs of complying with the proposed changes to the rules in this project will be negligible as most changes are technical and do not increase any preexisting requirements, other than clearly prohibiting geoduck gear onboard vessels engaged in scallop, sea cucumber, and sea urchin fisheries.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: The requirements already apply to small businesses and changes to the rule are mostly technical in nature, meaning that costs associated with the rule are negligible. Other changes are made as clearly as possible to reduce the chance of confusion for small businesses complying with the rules. As such, it was not necessary for the department to take additional steps to reduce the costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department solicited feedback and suggestions from stakeholders, almost exclusively small businesses, prior to filing the CR-102 for the proposed rule changes. The department

welcomes input from stakeholders and will continue to work with them throughout the rule process to achieve the best outcome possible for all parties.

WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to people who notified the department that they are interested in the department's rule-making activities. The department will also send direct notice to those commercial fishers holding dive fishery licenses to notify them of the proposed rule changes. This notice directs the receiver to information on how they can participate in the rule-making process and comment on proposed changes.

8. A List of Industries That Will Be Required to Comply with the Rule: Commercial fishers will be required to comply with the rules.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501, phone (360) 902-2403, fax (360) 902-2155, e-mail Joanna.eide@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

October 2, 2013
Joanna M. Eide
Administrative Regulations Analyst
Acting Rules Coordinator

NEW SECTION

WAC 220-16-101 Definitions—Shellfish dive gear. "Shellfish dive gear" is defined as compressed gas delivery equipment required for breathing underwater and attire required to provide thermal protection during underwater shellfish dive harvest operations.

NEW SECTION

WAC 220-16-102 Definitions—Hand held tool. "Hand held tool" is defined as tools that are held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity.

AMENDATORY SECTION (Amending WSR 11-07-108, filed 3/23/11, effective 4/23/11)

WAC 220-52-069 Commercial scallop fishery—Puget Sound. ((~~It is unlawful to fish for or possess scallops taken for commercial purposes from Puget Sound except as provided for in this section:~~))

(1) **Licensing and permits:**

(a) ((~~Rock scallops and weathervane scallops.~~)) It is unlawful to fish for, take, or possess scallops with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(b) It is unlawful ((~~at any time~~)) to fish for, take, or possess rock or weathervane scallops ((~~taken~~)) for commercial purposes from Puget Sound unless a person ((~~has~~)) first ((~~obtained~~)) obtains a valid scallop brood stock collection permit issued by the department. ((~~The permit will specify~~)) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, violation of commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(c) It is unlawful to harvest scallops for brood stock or culture purposes in a manner that violates scallop brood stock collection permit provisions. Scallop brood stock collection permit provisions include, but are not limited to, the location, date and time restrictions on harvest, and the species((~~, location, time,~~)) and quantity of scallops ((~~that can be taken~~)) the permit holder may take for brood stock or culture purposes. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.750, Unlawful use of a department permit—Penalty.

(((~~(b) Licensing: A shellfish dive fishery license is a license that allows a permittee to retain rock and weathervane scallops for brood stock purposes.~~))

(2) ((~~Pink scallops and spiny scallops.~~)) **Harvest areas and seasons.**

(a) ((~~General provisions:~~

~~(i)~~))) It is unlawful to take or possess pink ((~~and~~)) or spiny scallops ((~~may be harvested from Puget Sound at any time.~~

~~(ii) The minimum commercial pink or spiny scallop size is 2 inches in length from the hinge to the outer margin of the shell.~~

~~(iii) Persons fishing for pink or spiny scallops must have approval of the Washington state department of health. Scallops may only be taken from areas approved by the department of health and any fisher taking pink or spiny scallops must have on board the harvesting vessel a valid department of health shellfish toxin sampling agreement.~~

~~(iv) No other shellfish except octopus and squid may be retained while scallop fishing or while scallop are possessed aboard the scallop fishing vessel.~~

~~(b) Trawl gear provisions: Otter trawl gear may not be used to fish for scallops in Puget Sound at any time.~~

~~(c) Shellfish diver gear provisions:~~

~~(i) Diving for scallops is prohibited in Sea Urchin Districts 1 and 2 closed waters as defined in WAC 220-52-073 (1)(a)(i), (ii), (1)(b)(i), and (ii).~~

~~(ii) Licensing: A shellfish dive fishery license is the license required to take scallops with shellfish diver gear.~~)) for commercial purposes, except during open scallop harvest seasons from open shellfish management areas as provided by emergency rule.

(b) It is unlawful to fish for, take, or possess scallops from the closed waters in Sea Urchin Districts 1, 2, 5, and 7 as defined in WAC 220-52-073.

(c) It is unlawful to fish for or take pink or spiny scallops from official sunset through 5:59 a.m. the following morning.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(4) **Size limits:** It is unlawful to take or possess pink or spiny scallops less than 2 inches in length, measured from the hinge to the outer margin of the shell. A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(5) **Shellfish dive gear and harvest vessel restrictions:**

(a) It is unlawful to fish for, take, or possess pink or spiny scallops by any means other than by hand with shellfish dive gear. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful to operate a vessel engaged in scallop harvest operations unless the vessel registration number assigned by the department is properly displayed as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(c) It is unlawful for more than one diver from a harvest vessel to be in the water at any one time during pink or spiny scallop harvest operations or when commercial quantities of pink or spiny scallops are on board the vessel. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful for a vessel engaged in the harvest of pink or spiny scallops to have through-hull fittings for water discharge hoses to be below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to possess geoduck harvest gear, including water jet nozzles, onboard a vessel engaged in the commercial pink or spiny scallop fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during pink or spiny scallop harvest operations, or possess geoduck clams on a vessel that has pink or spiny scallops on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

AMENDATORY SECTION (Amending WSR 03-16-098, filed 8/6/03, effective 9/6/03)

WAC 220-52-071 Commercial sea cucumber((s)) fishery. ((~~It is unlawful to take or possess sea cucumbers taken for commercial purposes except as provided for in this section.~~))

(1) **Licensing:** It is unlawful to fish for, take, or possess sea cucumbers with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

(2) **Harvest areas and seasons:**

(a) It is unlawful to fish for, take, or possess sea cucumbers for commercial purposes, except during open sea cucumber harvest seasons and from open sea cucumber districts as provided by emergency rule.

(b) It is unlawful to fish for or take sea cucumbers from official sunset to 5:59 a.m. the following morning.

(c) A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) **Sea cucumber districts defined:**

(a) Sea Cucumber District 1 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, 21A, 21B, 22A, 22B, and 23B outside of the following closed areas:

(i) San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(ii) Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.

(b) Sea Cucumber District 2 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 23A, 23C, 23D, 25A, 25B, 25C, 25D, 25E, and 29.

(c) Sea Cucumber District 3 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D, 26A, 26B, and 26C. The following areas within Sea Cucumber District 3 are closed to the harvest of sea cucumbers:

(i) Those waters of Eagle Harbor west of a line projected from Wing Point to Eagle Harbor Creosote Light Number 1, then projected due west to shore on Bainbridge Island.

(ii) Those waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner to landfall directly below the Veteran's Home in Annapolis.

(d) Sea Cucumber District 4 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B, and 27C.

(e) Sea Cucumber District 5 is defined as the waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26D, 28A, 28B, 28C, and 28D.

((~~(2) Sea cucumber areas and seasons:~~

~~Sea cucumber areas and seasons will be set by emergency rule.~~

~~On days open to sea cucumber harvest, it is unlawful to take sea cucumbers from one-half hour before official sunset to 5:59 a.m. the next morning. Violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.~~

~~(3)~~)) (4) **Shellfish ((~~diver~~)) dive gear and harvest vessel restrictions:**

(a) ((~~Divers operating from~~)) It is unlawful to fish for, take, or possess sea cucumbers taken for commercial purposes by any means other than by hand with shellfish dive gear. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(b) It is unlawful to operate a vessel ((~~must have a~~)) engaged in commercial sea cucumber harvest operations unless the vessel registration number assigned by the depart-

ment ((~~placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air, and the letters must be black on white no less than eighteen inches in height and of proportional width. Failure to display these numbers~~)) is properly displayed on the vessel as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license.

(((~~(b) Only~~)) (c) It is unlawful for more than one diver from ((~~each harvesting~~)) a harvest vessel ((~~is allowed~~)) to be in the water at any one time during ((~~the~~)) sea cucumber harvest operations or when commercial quantities of sea cucumbers are aboard, except that two divers from a harvest vessel may be in the water at one time if the vessel ((~~has been~~)) is designated on two sea cucumber dive fishery licenses. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(((~~(c) Divers may not fish for or~~)) (d) It is unlawful for a vessel engaged in the harvest of sea cucumbers to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to possess geoduck harvest gear, including water jet nozzles, onboard a vessel engaged in the commercial sea cucumber fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(5) **Possession restrictions:** It is unlawful to possess geoduck clams during commercial sea cucumber ((~~harvesting~~)) harvest operations, or possess geoduck clams on a vessel that has sea cucumbers on board. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(((~~(d) Licensing: A sea cucumber dive fishery license is the license required to operate the gear provided for in this section.~~

~~(4) **Trawl gear:**~~

~~It is unlawful to fish for or possess sea cucumbers taken with trawl gear. Violation of this subsection is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.~~))

AMENDATORY SECTION (Amending WSR 08-15-127, filed 7/22/08, effective 8/22/08)

WAC 220-52-073 Commercial sea urchin((~~s~~)) fisheries. ((~~It is unlawful to take or possess sea urchins taken for commercial purposes except as provided for in this section.~~))

(1) **Licensing:** It is unlawful to fish for, take, or possess sea urchins for commercial purposes with shellfish dive gear without a valid shellfish dive fishery license. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.500, Commercial fishing without a license—Penalty, depending on the circumstances of the violation.

(2) **Harvest areas, seasons, and size restrictions:**

(a) It is unlawful to fish for, take, or possess sea urchins for commercial purposes except during open sea urchin harvest seasons, from open sea urchin districts, and within the size restrictions as set by emergency rule.

(b) It is unlawful to fish for or take sea urchins from official sunset through 5:59 a.m. the following morning.

(c) It is unlawful to harvest or possess sea urchins taken from less than ten feet below mean lower low water.

(d) It is unlawful to process sea urchins aboard the harvest vessel.

(e) It is unlawful to take sea urchins for commercial use for purposes other than human consumption.

(3) A violation of subsection (2) of this section is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.

(4) **Sea urchin districts defined:**

(a) Sea Urchin District 1 (Northern San Juan Islands) is defined as Marine Fish-Shellfish Management and Catch Reporting Areas 20A, 20B, and those waters of Area 22A north of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and west of a line projected true north from Limestone Point on San Juan Island.

(b) Sea Urchin District 2 (Southern San Juan Islands and Port Townsend) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A south of a line projected east-west one-quarter mile north of Lime Kiln Light on San Juan Island and east of a line projected true north from Limestone Point on San Juan Island and Areas 21A, 21B, 22B, 23A, 23B, 25A and 25B. The following areas within Sea Urchin District 2 are closed to the harvest of sea urchins at all times:

(i) Those waters of Haro Strait north of a line projected due west from the southernmost point of Cattle Point on San Juan Island to the international border and south of a line projected due west from a point one-quarter mile north of Lime Kiln Light on San Juan Island to the international border.

(ii) Those waters of San Juan Channel and Upright Channel within the following lines: South of a line projected from Flat Point on Lopez Island true west to Shaw Island; west of a line from Neck Point on Shaw Island to Steep Point on Orcas Island; south of a line from Steep Point on Orcas Island to Limestone Point on San Juan Island north of a line from Flat Point on Lopez Island to the northernmost point of Turn Island and thence projected true west to San Juan Island.

(c) Sea Urchin District 3 (Port Angeles) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C east of a line projected true north from Low Point, along 123°49'30" W. longitude, and Area 23D.

(d) Sea Urchin District 4 (Sekiu) is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 23C west of a line projected true north from Low Point, along 123°49'30" W. longitude, and those waters of Area 29 east of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock).

(e) Sea Urchin District 5 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Area 29 west of a line projected true north from the mouth of Rasmussen Creek (3.1 miles southeast of Sail Rock) and Areas 59A and 59B. Within Sea Urchin District 5, waters within one-quarter mile of Tatoosh Island are closed to the harvest of sea urchins at all times.

(f) Sea Urchin District 6 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C, 24D and 26A.

(g) Sea Urchin District 7 is defined as those waters of Marine Fish-Shellfish Management and Catch Reporting Areas 26B, 26C, 26D and 28A. The following areas within Sea Urchin District 7 are closed to the harvest of sea urchins at all times.

(i) Those waters of Eagle Harbor west of a line projected from Wing Point to Eagle Harbor Creosote Light Number 1, then projected due west to the shore on Bainbridge Island.

(ii) The waters of Sinclair Inlet west of a line projected southerly from the easternmost point of Point Turner to landfall directly below the Veteran's Home in Annapolis.

((~~(2) **Sea urchin seasons and sizes:**~~

~~(a) Sea urchin seasons will be set by emergency rule.~~

~~(b) Green sea urchins in all sea urchin districts - unlawful to harvest urchins smaller than 2.25 inches (size in largest test diameter exclusive of spines).~~

~~(c) Red sea urchins in Sea Urchin Districts 1 and 2: Unlawful to harvest urchins smaller than 4.0 inches or larger than 5.5 inches (size in largest test diameter exclusive of the spines).~~

~~(d) Red sea urchins in Sea Urchin Districts 3 and 4: Unlawful to harvest urchins smaller than 3.25 inches or larger than 5.0 inches (size in largest test diameter exclusive of spines).~~

~~(3)~~)) (5) **Shellfish ((~~diver~~)) dive gear and harvest vessel restrictions:**

(a) It is unlawful to fish for, take, or possess sea urchins by any means other than ((~~shellfish diver gear.~~

~~(b) Divers may only use hand-operated equipment~~)) with hand held tools that ((~~does~~)) do not penetrate the shell.

(((~~c) Sea urchins may not be taken from water shallower than 10 feet below mean lower low water.~~

~~(d) Purple sea urchins may not be taken.~~

~~(e) Divers operating from a vessel must have a number assigned by the department, placed on both sides and the top of the vessel in such a manner that the number is clearly visible when the vessel is viewed from either side or from the air and the number must be black on white no less than 18 inches high and of proportionate width.~~

~~(f) Divers may not take sea urchins from one-half hour after sunset to one-half hour before sunrise.~~

~~(g) No processing of sea urchins is permitted aboard the harvest vessel.~~

~~(h) Divers may not take sea urchins for use other than as human food.~~

~~(i) Only~~)) (b) It is unlawful for more than one diver from ((~~each harvesting~~)) a harvest vessel ((~~is allowed~~)) to be in the water at any one time during ((~~the~~)) sea urchin ((~~harvesting~~)) harvest operations or when commercial quantities of sea urchins are ((~~aboard~~)) onboard, except that two divers may be in the water if the harvest vessel ((~~has been~~)) is designated on two sea urchin dive fishery licenses.

(((~~(j) Variance from any of the provisions of this subsection is only allowed if authorized by a permit issued by the director.~~

~~(k) Licensing: A sea urchin dive fishery license is the license required to operate the gear provided for in this section.~~)) (c) It is unlawful for a vessel engaged in the harvest of sea urchins to have through-hull fittings for water discharge hoses below the surface of the water. Through-hull fittings above the water line must be visible at all times. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(d) It is unlawful to possess geoduck harvest gear, including water jet nozzles, onboard a vessel engaged in the commercial sea urchin fishery. A violation of this subsection is a gross misdemeanor punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

(e) It is unlawful to operate a vessel engaged in sea urchin harvest operations unless the vessel registration number assigned by the department is properly displayed as provided by department rule. A violation of this subsection is a misdemeanor punishable under RCW 77.15.540, Unlawful use of a commercial fishery license—Penalty.

(6) **Possession restrictions:** It is unlawful to possess geoduck clams during commercial sea urchin harvest operations, or possess geoduck clams on a vessel that has sea urchins onboard. A violation of this subsection is a gross misdemeanor or class C felony punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty, depending on the circumstances of the violation.